

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

76-5043

In the Matter of

ALBERT W. DUMMOND, INC.

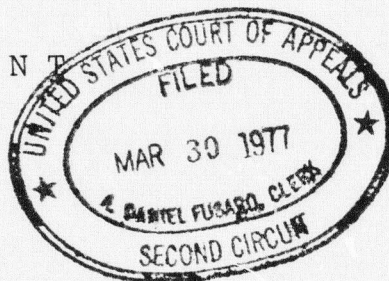
L. ROBERT LEISNER,

Co-counsel for the Trustee-Appellant

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) Docket No. 76-5043
)
) Bankrupt
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)

(Appeal from W.D.N.Y.)

B R I E F
F O R
A P P E L L A N T



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QUESTIONS PRESENTED

1. Were Attorney Leisner's services on:

- A. the bankrupt's taxes
- B. rental properties, on lease cancellations and on recovery of rentals
- C. correspondence on A, B and D
- D. on its entanglements with wage earners' claims, labor officials, tax authorities, assessors, insurance coverage

legal services which should be compensated?

2. Was the M & T preference litigation on which Attorney Leisner did the major work concluded by merely a \$24,000 cash settlement?

3. May the Attorney's:

- A. overhead attributable to the services rendered herein
- B. income taxes on his compensation herein

be ignored in setting reasonable Attorney's fees?

4. Were the Bankruptcy Court's conclusions:

- A. supported by the law
- B. justified on the record of work done and all the evidence before the Court

NATURE OF THE CASE

This is an appeal in bankruptcy by Attorney Leisner, Co-Counsel to the trustee from an order for a \$5,500 fee allowance (diminished by costs) on an \$18,500 fee application accompanied by detailed time sheets.

COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURTS BELOW

On June 24, 1974, Attorney Leisner filed his petition for allowance of \$18,500 attorney fees as Co-Counsel to the trustee with a thorough report of his legal services accompanied by a detailed record of the work done and the time spent on the work totaling 308.35 hours.

The Co-Counsel, Goldstein, Navagh, Bulan & Chiari had also filed its petition for \$8,600 counsel fees for services totaling in excess of 136 hours. The attorneys for the deceased attorney John Swerdloff (earlier Counsel to the trustee for about five months) also filed an application for \$18,000 without time sheets on behalf of his estate. (No Counsel fees had ever been paid in this bankruptcy.)

The matter came on before Honorable Beryl E. McGuire, Bankruptcy Judge, at the final meeting of creditors on April 16, 1975. There was no opposition to Attorney Leisner's fee application from Co-Counsel, the trustee, creditors or anyone. (A-175)

On May 2, 1975, Attorney Leisner filed a supplement to further support his petition and report of legal services reporting additional work in 1974 and 1975 for the bankrupt. (A-72-74). Time now totaled 320 hours. (A-96, #36)

On October 3, 1975 (a Friday), a report (A-82) and proposed order were forwarded by Bankruptcy Judge McGuire to the District Court (Curtin, Ch. Judge) which approved the order on (Tuesday) October 7, 1975. (A-82)

The report was mailed on October 9, 1975, received thereafter by Attorney Leisner, and on October 20, 1975 he personally applied to Ch. Judge Curtin for opportunity to be heard. (A-87)

On Attorney Leisner's motion for reconsideration and a hearing in the District Court, Ch. Judge Curtin remanded the case to the Bankruptcy Judge for a hearing. The hearing was held on February 12, 1976 and on April 27, 1976 the Bankruptcy Judge forwarded a report (dated April 26) (A-184) to the District Court and a copy to Attorney Leisner and his Counsel William R. Brennan.

DISPOSITION IN BANKRUPTCY COURT

The Bankruptcy Court reports of October 3, 1975 (A-82 et. seq.) and April 26, 1976 (A-184 et. seq.), among other dismissals of Attorney Leisner's work; 1) dismissed his work on the Federal and State income tax problems of the bankrupt, 2) his work on the rentals and the rental properties when difficulties ensued in the collection of rentals, on the renewal and purchase options of the leases, on dispossess actions, insurance and tax difficulties and 3) characterized the M & T preference litigation as a \$24,000 settlement.

The Bankruptcy Court awarded \$5,500 to the Goldstein firm for 136 hours of work, \$5,500 (diminished by \$139.50 costs) to Attorney Leisner

for 320 hours of work and \$1,500 to Attorney Swerdloff's estate for services as Counsel to the trustee and \$1,500 as Counsel for the petitioning creditors.

DISPOSITION IN THE DISTRICT COURT

Attorney Leisner on May 18, 1976 filed objections to the Bankruptcy Judge's report. (A-190)

On October 26, 1976 (A-200), the District Court, Ch. Judge Curtin, confirmed the Bankruptcy Court's order and Report of Allowance of \$5,500 (diminished by \$139.50 costs) to Attorney Leisner on his \$18,500 fee application.

On November 26, 1976, Attorney Leisner served and filed his Notice of Appeal to this Court. (A-204)

F A C T S

L. Robert Leisner is a licensed attorney and counselor-at-law admitted to and practicing in the Federal Courts for over 20 years with an office in Buffalo, New York (A-1, A-126, 127). He was appointed Co-Counsel for Louis Sternberg, Trustee of the bankrupt herein on or about November 16, 1966 upon the death of John Swerdloff, original attorney for the said trustee herein (A-1).

He rendered legal services pursuant to that appointment.(A-1).

I. THE BANKRUPTCY AT THE START

The Bankrupt

At the time the petition in bankruptcy was filed, on or about July 6, 1966, the bankrupt was in the window installation and construction business for many years past and was actively engaged in window installations on new construction work for large public and commercial buildings in New York and several other states. The bankrupt had encountered increasingly slow and bad receivables for large jobs over recent years and began to actively experience financial difficulties such as meeting payrolls, paying creditors and covering overdrafts. As the situation became critical with bouncing checks and overdrafts, by the bankrupt which had accrued a large unsecured indebtedness to the M & T Trust Company. The bankrupt came under bank pressure to cover drafts and debt renewals and made a large mortgage to the M & T Trust Company on its valuable real property and buildings in the Town of Tonawanda. This mortgage was within four months of the filing of the petition for bankruptcy.

The mortgage was for an antecedent indebtedness and was believed to be in excess of \$100,000.00 (A-1, A-2) (A-140, 141, 142).

Death of Trustee's Attorney

The appointment of the Trustee, Louis Sternberg and his attorney John Swerdloff took place in August 1966 and administration of this estate had been excellently commenced, when John Swerdloff died on November 14, 1966 after a short illness (A-2).

Conditions of Bankrupt Estate

While the condition and progress of the administration of the bankruptcy during this short time were excellent, the unfortunate death of the Trustee's attorney in a bankruptcy of this size and complexity at a critical time created problems, burdens and work which would not otherwise have been the case (A-2) (A-140).

At that time collection of the accounts receivables had commenced. All of the debtors had been contacted and some receivables had been collected. Many of the debtors had asserted offsetting construction completion charges and other setoffs and counterclaims (A-140). The office equipment and personalty had been sold. The trustee was in possession of the real property and collecting rents. The lessees held leases with various renewal and right of first purchase options (A-146). Additionally, the Manufacturers' and Traders' Trust Company asserted the validity of its mortgage which it now developed was for a principal amount of approximately \$125,000.00 against the same property together with claims for rentals by assignment (A-3) (Exhibits p.15, 24).

At that same time, payrolls, W-2 forms and taxes were confused and had not been determined. The bankrupt's prior and present insurance coverage was tangled. There was much uncertainty about the work and jobs in progress which had stopped at various construction sites (A-3).

Organizational Meeting

Almost immediately upon their appointment, the Co-Counsel by mutual agreement met at an organizational meeting to devise a work plan and to undertake work best suited to their time, skills and office facilities (A-142, L.18). At this meeting, it was recognized that even with the already excellently structured administration of the estate by John Swerdloff, the creation of any significant estate for the bankrupt would rest to a great degree on several highly questionable factors which would require a vast amount of work (A-3).

Principal Factors to Create An Estate

These factors were:

a) A principal asset listed in the bankrupt's schedules was the real estate of \$60,000.00 (presumably cost or book value) against which the M & T had already asserted a secured mortgage principal of approximately \$125,000.00 as well as the rental assignments to cover the debt (A-3) (Exhibits p.15, 24).

b) The second principal asset consisted of debts due on open account in the book amount of \$190,805.00. The fact that the bankrupt had been going downhill for several years past indicated

that most of these accounts were old and aging and would be difficult if not already uncollectible by virtue of the poor condition of the debtors a number of whom were already out of business or near collapse. Additionally, many of the accounts were for building work only partially completed which would be subject to counterclaims, damage claims for work left exposed and damaged by the work stopping, claims for cost of completion and many accounts were flatly disputed or had claims for inferior work already done, or for work change orders, etc. (A-3).

d) Additionally, the mere matter of administering and straightening out claims and inquiries from all quarters for payrolls, insurance, taxes, compensation taxes and all the other government and private inquiries would constitute a great drain on the estate and would involve a great burden of administration. The obtaining of job records, contracts and lien records was, of course, essential to our claims and accounts receivable on behalf of the bankrupt (A-4) (A-140).

d) Further due to the chaotic condition of construction work when stopped in progress not only the accounts receivable would have difficulties of excessive counterclaims, but the accounts payable would have inflated claims which would have to be resisted and corrected (A-4) (A-142).

II. DIVISION OF WORK

The organizational conference resulted in the firm of Goldstein, Navagh and Bulan undertaking most of the remaining work and litigation on collection, extensive work on building construction liens favorable to the bankrupt, work against creditors' claims and much other work as well as working jointly much of the time with Attorney Leisner as Co-Counsel against the large preferential transfer to the M & T; all of which works are reported to the Court by that firm in its application (A-4) (A-142).

III. ATTORNEY LEISNER'S WORK

Liaison Counsel and Document Depository

Immediately after this conference, Attorney Leisner who was located at the same office as John Swerdloff, began to work to separate the bankruptcy files in John Swerdloff's office and to separate and transmit all such files as were appropriate to the office of his Co-Counsel in accord with the work plan devised at the aforesaid organizational meeting. Due to the mass of files and material this process at intermittent interval extended over a considerable period of time. Attorney Leisner also undertook to handle the considerable volume of accumulated and oncoming mail which was already being directed to the same office to the late John Swerdloff and to make the appropriate distribution to the respective Co-Counsel so that pending litigation, negotiations and correspondence on behalf of the bankrupt would take place without interruption, delays and confusion and the pending work of the deceased attorney carried on by the Co-Counsel as planned (A-4, A-5) (A-142 L.21).

Mr. Leisner undertook to and did the work to ascertain the whereabouts of papers, contracts, tax returns, financial statements, etc. in files stored at the Swerdloff residence garage, or warehoused in the storerooms of the Fiddler and Company accounting in transfer and storage files. Because of the action being brought against the M & T preferential mortgage, it was essential to maintain the possession and integrity of these records as the various inquiries and demands took place from tax, labor and other government officials and arrangements were being made to cover confused payroll and insurance situations. Considerable time in the worksheets included time to refer to the records in connection with tax authorities, offsets, counterclaims, wage claimants and refund claims by the bankrupt on prepaid items (A-5) (A-140-143).

The necessity for this work was reflected by the March 12, 1968 Notice of Deposition of the M & T requiring the production of financial statements, account books, records, correspondence inventory, insurance records, tax returns, records of property, machinery, fixtures and equipment, depreciation records, records of reserves and deposits, records and correspondence of the trustee and counsel concerning the bankrupt's assets and liabilities, compromises of lawsuits, appraisal reports or opinions of assets, transcripts of testimony (notice of deposition March 12, 1968, pages 2, 3 and 4), memoranda, rough notes or writings of conferences, conversations (the notice required much more) (A-92).

Tax Work For Bankrupt

Early in the bankruptcy proceedings, the trustee requested Mr. Leisner to take care of the tax affairs and returns of the bankrupt. Filing of Federal and New York State tax returns was necessary and after investigating the affairs of the bankrupt, he concluded that certain losses of the bankrupt were available to the bankrupt for tax write-offs (A-5, A-95) (A-166, 167).

Considerable work and research was required to determine the amount of losses and to document them from the files of the bankrupt. Thereafter, he prepared and filed tax returns on behalf of the bankrupt and utilized the loss carryovers. Additionally in March 1970, he requested early audits in order to close this bankruptcy. Upon audit, he conferred with the tax examiner and supplied documentation by way of prior financial statements and records, further documentation and records of certain loss transactions from the papers of the bankrupt (A-5). Subsequently, after an audit which spanned the year, in March 1971, the bankrupt received a report of no change for the years 1967, 1968 and 1969 (Ex. 6, p. 37 of Exhibits) (A-166, 167).

The subsequent returns were filed for the years 1970, 1971, 1972 and 1973 and a no change report has been received after a request for early audit (Ex. 7, p. 38 of Exhibits) (A-166, 167).

The Attorney's tax work resulted in reports of no tax on income from rents and interest in excess of \$84,000.00 (A-95) (income listed).

Work on M & T Mortgage Litigation

The real property and buildings of the bankrupt which were the principal asset of the bankrupt according to the schedule filed by the bankrupt after the involuntary petition and further according to that schedule, the property was fully mortgaged to the M & T and that bank vigorously and steadfastly maintained the validity of the mortgage (A-6) (A-142, 143). Factors essential to the setting aside of this mortgage would be the showing that the M & T was a general creditor of the bankrupt, that the mortgage was to secure an antecedent indebtedness, that the bankrupt was insolvent at the time of the mortgage and transfer to the M & T, that the M & T had reasonable cause to believe that the bankrupt was insolvent at the time of the transfer, and that the actual effect of the transfer was to give the M & T a greater percentage of its debt than other creditors of the same class. Because of the importance of the M & T litigation to the bankruptcy, Mr. Leisner conferred and consulted with Co-Counsel David J. Goldstein at timely as well as at all critical stages of this most important litigation in the bankruptcy (A-6) (A-143). While there was no duplication of work, it was essential that both Co-Counsels be abreast of the case and aware of the progress, developments and views of the other Co-Counsel so as to coordinate and maximize their joint attack against this preferential mortgage (A-6) (A-142, 143).

Experience in Net Worth Litigation

Mr. Leisner having a considerable background and experience in net worth litigation (O'Connor v. Comm.; Kendzie v. C.; Casciani v. Comm., U.S., etc.), undertook to do and did the work on this mass of records

and papers, locating, studying and analyzing the many financial statements of the bankrupt, its subsidiary and affiliates and their intercorporate dealings (A-6) (A-153-156). Mr. Leisner also searched out the evidence, the correspondence and financial records to prove the facts surrounding the long prior and antecedent indebtedness of the bankrupt to the M & T on early unsecured notes. Mr. Leisner also undertook the valuation of the real property by appraisers for the coming litigation, the investigation of facts surrounding bank overdrafts to creditors and employees, the preliminary facts for evaluation of accounts receivable by fiscal experts, the accounts payable, the tax situation, the back claims on pending construction work and many other factors relating to an accurate picture of the bankrupt's financial condition at the time of the transfer. Because of the great mass of records and files and the many items contained in a corporate balance sheet, the legal investigation and research were extremely demanding and time consuming work (A-7) (A-153-156).

Legal Work With Accountant for M & T Litigation

Mr. Leisner then undertook the retention of Ronald Fiddler, C.P.A. of the Fiddler & Co. accounting firm, to also independently ascertain the status of the bankrupt at the time of the preferential transfer to the M & T. The certified accountant utilized all of the above material and also tax returns and other materials to form an independent opinion and to be a competent qualified witness in preparation for the coming Court trial. The retention of the certified public accountant by the trustee, his services to the bankrupt estate, and the payment

of his \$2,000.00 fee which has been paid were authorized and confirmed by the orders of the Court. During the work of the accountant, in order for his work to be accomplished, it was necessary for Mr. Leisner to confer with the accountant on numerous occasions. Also, to supply him with many papers and documents as well as reports on collections and payables so that he could competently and properly do his work (A-7).

Along with its contention of a valid mortgage preference, the M & T asserted its right to rentals, the validity of rental assignments and demand payment on property taxes for its asserted mortgage. Arrangements to pay taxes were made and certain indemnification commitments were made to the trustee by the M & T for his administration of tax payments and rentals should the M & T assertions respecting the mortgage and rentals prevail (A-7).

Rentals and Real Property

Attorney Leisner undertook and did accomplish the legal work of administering and maintaining possession of the real property, and obtaining difficult rentals and keeping them in this estate. Considerable work was expended on this facet of the bankruptcy. Difficulties in rental collection with the Coder, Inc. tenant ensued early in the bankruptcy and continued throughout the bankruptcy (A-8, Item 18). West End rentals were paid directly to the trustee (A-93, Items 23, 24). Much work was devoted to these difficulties in order to prevent waivers of lease terms favorable to the bankrupt and to enable the bankrupt to later attack the lease renewal and right of purchase options. The tangled expenses, property taxes, assessments, utilities, insurance bills, etc. consumed a great deal of time and work. The bankrupt collected \$62,378.45 rentals (A-8) (A-66, 67). Virtually all of this work was done exclusively by Attorney Leisner (A-8).

In the early part of 1968, it was determined to break the leases and work by both Co-Counsels was undertaken for that purpose in the bankruptcy Court with both tenants being brought into that court. After several appearances and conferences, action in this respect was deferred by stipulation of all parties (A-8) (A-146).

State Court Eviction and Lease Cancellation

Ultimately because of the difficulties with Coder Service, Inc. on rentals and the desirability of breaking lease renewals and purchase options for more favorable sale of the bankrupt's property, full scale eviction proceedings were undertaken by Attorney Leisner alone against Coder Service, Inc. in the State Courts, and after trial, an agreement was obtained which rid the property of lease renewal options and purchase options and prepared the way of the sale of the property (A-145). This work was done exclusively by Mr. Leisner (A-9).

Auction

Thereafter working with Co-Counsel on Court order, an auctioneer was appointed and an auction held with sale subject to confirmation at which a lump bid of \$80,000.00 and a piece meal bid of \$85,000.00 were obtained. Because of the uncertainties involved in the M & T preferential mortgage transfer which controversy was still pending, the sale was not confirmed. These actions on the part of both counsels resulted in fixing values, bringing the preferential mortgage transfer litigation into focus and expediting the litigation and accompanying negotiations, etc. (A-9) (A-148).

M & T Mortgage Litigation

By this time, Attorney Leisner had done much work on financial statements, on case law, on marshalling evidence and various legal papers, interviewed witnesses, and retained the services of an accountant and an appraiser for the pending litigation. Additionally, Attorney Leisner, had held many conferences with Co-Counsel and had held examinations before trial with Co-Counsel acting jointly in those examinations. Early in 1968, active litigation on the M & T mortgage preference had ensued. With not only a number of Court appearances reflected in the work schedules herein and also the report of Co-Counsel, the litigation also encompassed numerous show cause orders, affidavits and petitions with claims and counterclaims, amendments, notices to produce for examinations before trial by the M & T and also innumerable adjournments, conferences and negotiations between the parties which are reported in his work schedules herein (A-9).

Attorney Leisner maintained all of the direct litigation file on the M & T preferential transfer at his office. Mr. Leisner carried the bulk of the work on the litigation of the preferential transfer while insolvent having a considerable background over many years as a lawyer in net worth litigation. (O'Connor v. Comm.; Kendzie v. Comm.; Casciani v. Comm.; Casciani v. U.S.) (A-91).

The opposition in this case was one of the largest banks in Western New York and one of the largest law firms in the City of Buffalo. Attorney Leisner, when alone or when with Co-Counsel, whether in conference or in Court, was always faced with a senior partner, William H. Gardner, frequently accompanied by another member of the firm and there was always a bank official in their company (A-92).

M & T Litigation Settlement

Ultimately with a full trial of at least several weeks of complicated and difficult financial litigation looming, the litigation was resolved by a stipulation signed by the parties in September 1968, and an order entered in October 1968, both in this Court by which the bankrupt was paid \$25,000.00 less 1/4th years school taxes and was allowed to keep all rents previously collected. The rents and cash payment totaled \$86,833.35 (A-9, 10).

Additionally, the M & T waived all right to claim or further participate in the bankruptcy thus waiving \$51,873.93 of other principal claims on its claimed mortgage in excess of \$137,780.08 as of March 18, 1968. With adjustments for property taxes, interest income on rents deposited and insurance bills, the \$86,000.00 odd dollar figure would probably net to more than \$70,000.00 (A-10), cash, plus a waiver of a \$51,876.93 deficiency judgment (A-99).

Considering the earlier auction bid of \$85,000 and the auction and sale expenses on an actual sale, the amount realized and the claim waiver, reflect a 100 percent recovery on the real property for the bankrupt. The great amount of legal work done to accomplish this result was warranted and highly successful (A-11).

Ready to Close in 1970

While Attorney Leisner had completed the closing of some collections in the process of settlement or payment when he commenced work, in the main this work had been done in due course by Co-Counsel, and only the existence of a few necessary lawsuits in the hands of the Goldstein firm prevented the closing of this bankruptcy in 1970 (A-32).

IV. ATTORNEY LEISNER

Amount of Work Done

Attorney Leisner worked 320 hours on the bankrupt's affairs (A-11, A-73, A-74). Attorney Leisner's normal billing rate in 1965 was \$60 an hour. In some cases, it was more in the later part of the 1960's (A-170).

Overhead

During the years 1966 to 1970, Attorney Leisner leased an office and maintained a law office at 2500 Rand Building or 806 Rand Building at considerable expense.

The proposed allowance of Counsel fees and memorandum reflect no provision of law office overhead. (Items 29, 30) (A-95). The allowance would not cover overhead for the work attributable to this case let alone taxes (Item 38, A-96). (Point V-A Argument)

Efforts to Close Since 1970

It should be noted that the applicant sought and obtained an early audit in order to close the estate in 1970 (A-101). He sought to close the estate again in 1972 (A-102). He offered to the Co-Counsel to go to New York City for examinations before trial and for trial preferences in 1972. On a number of other occasions, he sought to close the estate (A-95, 96, 101, 102) (A-45, entries 5/26, 7/1) (A-46). Mr. Leisner came to Buffalo from Albany a number of times to do anything to close the estate (Item No. 35 in A-95). Subsequent to the filing of the application for attorney's fees, Mr. Leisner on different occasions spent several half-days with the Court staff itself reconciling records

of court orders which could not be interpreted due to changes in bankruptcy personnel and methods of recordkeeping (A-73, 74).

Experience

Mr. Leisner also did additional tax work (A-73) and other work for the bankrupt at the final meeting of creditors some of which is mentioned in his supplemental report, and the time spent on behalf of the bankrupt now exceeds 320 hours (A-47, 73, 74).

Mr. Leisner served as a trial lawyer for the Chief Counsel's Office I.R.S. in the 1950's and as attorney for many taxpayers e.g., Bauer v. Foley, (2nd Cir.) and served as a special tax counsel many times (A-128, A-130).

Mr. Leisner has practiced law for over 20 years (A-126) in Federal Courts in Ohio, Washington, D.C. and New York (A-127, 128) and particularly in the trial and appellate courts, State and Federal, located in New York State, has done successful work as Counsel in major capital cases (A-132, 133) and has done a considerable amount of practice in the tax and financial fields (Tr 83, February 12, 1976) (A-130, 131). In 1954 or 1955 as a young lawyer, he was with a law firm that had a very large collection practice representing Dun and Bradstreet and a number of the major oil companies (Tr 83, February 12, 1976).

Mr. Leisner is a Hearing Officer for New York State and has held formal hearings across New York State in litigated cases since June 1970 (A-125).

V. THE BANKRUPTCY AT THE END

a. At the end of the bankruptcy, total receipts were:

\$ 86,833.35*	M & T settlement of retained rents and cash payment
21,338.59*	Interest largely on above funds
35,288.67	Receipts obtained from disputed claims and accounts receivable
<u>9,487.25</u>	Auction of personalty and refund claims
\$152,947.86	Receipts

Later interest brought the total

TO:

\$154,196.34 TOTAL RECEIPTS (A-81)

Approximately *\$108,000 was derived from the litigation involving the preferential transfer of the real property and funds and interest derived therefrom. The M & T throughout claimed both the real property and the rentals of *\$62,378.45 (E-18, 19). The cash payment of \$25,000 less a fraction of school taxes, \$24,454.92 (E-29) and the rentals totaled *\$86,833.35. Interest brought the total to in excess of \$108,000.

Attorney Leisner worked on the difficulties of the rentals and the lease waivers, cancellation of options and pursued an ejectment action to keep the \$62,378.43 rentals coming to the bankrupt and to protect the *\$62,378.43 of rentals.

Attorney Leisner worked on the tax matters of the bankrupt to keep the *\$62,378.43 of rentals and the interest of over *\$21,338.59 or more than *\$83,717.02 (the later interest brings the total to over \$85,000) clear of Federal and State taxes.

Attorney Leisner took the principal role in the M & T litigation and did the major work on it. He maintained the files at his office and coordinated the efforts of the Co-Counsel on this litigation and the negotiated settlement (E-27) (A-28, 29). The attorneys coordinated their work.

Attorney Leisner coordinated the bankruptcy files so that the collection and litigation of the accounts receivable by the Goldstein office, the M & T preference litigation and the bankrupt's tangled affairs on labor, taxes, insurance, realty and liens and charges meshed together to build up and preserve this estate (A-4, Items 9 and 10).

While Co-Counsels were both fully cognizant of the affairs of the bankrupt, they organized and divided the specific areas of their legal services (A-4, Item 8). The Goldstein firm concentrated in the area of the recovery of the accounts receivable and collection litigation, and took a more limited albeit important role and expended a much more limited amount of time on the M & T preference litigation (E-27).

b. Priority Claims, Secured Creditors and General Creditors

Without defeating the M & T claim to the property and rentals, without obtaining the cash (\$24,454.92) and without obtaining the rentals of \$62,378.45 (in spite of the difficulties on the rentals) and without the interest of \$21,338.59 on the amounts obtained, and without protecting the amounts obtained from taxes and other claims, this bankrupt's estate would have nothing left for creditors.

Priority payments of \$12,101.73 for wages, \$40,308.85 due for taxes and a secured payment due of \$1,358.75, total \$53,764.33 (A-83).

The assets recovered outside the matters in issue were only \$35,288.67 from accounts receivable (A-83) and \$9,487.25 (A-69, 70) for personalty claims or a total of \$44,775.92. Even with the allocation of a share of accrued interest upon this later sum, the resultant total would not equal the sum of priority and secured claims, thereby leaving nothing for general creditors.

On the \$18,500 fee of Attorney Leisner in issue and the fees allowed to the other firms, the dividend to the general creditors would exceed 21 percent.

c. The Allowed Fees

On the attorneys' reports of their services, the bankruptcy court allowed:

	<u>Request</u>	<u>Hours</u>	<u>Allowed</u>
L. Robert Leisner (Co-Counsel for Trustee)	\$18,500	320.00	\$5,500.00
Goldstein, Navagh & Bulan (Co-Counsel for Trustee)	8,600	136.00	5,500.00
Kavinoky, Cook, Hepp, Sandler & Wisbaum (Attorneys for Estate of John Swerdloff who was attorney for Trustee for about five (5) months)	18,000	No computation	3,000.00

The bankruptcy court report among other dismissals of Attorney Leisner's services: 1) dismisses the tax work on over \$85,000 of rentals and interest; 2) dismisses the work on the rental properties and the court actions and difficulties on the rentals of \$62,378.45 as not being legal services; 3) dismisses correspondence connected with 1), 2) and 4); and 4) characterized the M & T litigation as a \$24,000 settlement (A-85) (A-188).

Recently, Attorney Leisner was advised that the other law firms had been paid. Attorney Leisner has no quarrel with the other firms, their allowances or their payment.

Attorney Leisner has sought relief in the court below and appealed to this court. There has been no controversy among the attorneys and there is no opposition to Attorney Leisner or his application from the other attorneys, from the trustee, from the creditors.(A-175).

POINT I

WITHOUT ADEQUATE COMPENSATION A VITAL BAR IS IMPOSSIBLE

"What has already silenced the voices of silent spring in countless towns in America?"

"Silent Spring" (1962) Rachel Carson

"The things we care about the most are at the mercy of the things we care about the least."

William James

"The tradition of their fortitude, their sensitiveness to civil rights, and their vital interest in human freedom extends back through not only generations but centuries among the English speaking peoples.

"Perhaps the unfortunate developments outlined above may be attributed in part to the conspicuous absence today of such lawyers. But consideration of the problem resulting from the failure of the Bar and its well-nigh pervasive attitude of apathy lies outside the scope of this article."

New Encroachments on Freedom
John Lord O'Brian
66 Harvard Law Review, p. 26 1952

One facet of the "Failure of the Bar and its well-nigh pervasive attitude of apathy" may be illuminated by this appeal from the denials of the petitions and reports of Attorney Leisner the appellant in this case.

"Your petitioner was burdened with indigent work and time consuming cases in the State and Federal Courts at this time. Examples of work at that time: Stephanie Bauer v. Foley Dist. Dir. and U.S. appeal 2nd Cir. with reargument in 2nd Cir; *U.S. ex rel DeFlumer v. Mancusi Warden, Attica, (14 year-old child on life sentence) appeals to 2nd Cir; others interstate thefts etc: People v. Sam Edward Hillfitt, coram nobis, life sentence, Attica, Court of Appeals. **

"Your petitioner suffered great economic hardship at this

Footnote

*Bauer v. Foley and U.S. (2nd Cir.) one of the cases leading protection of women's rights in taxes and "innocent spouse" law

**New York State Court of Appeals.

time" . . . "And petitioner would have taken a job in other law work and left private practice, but the work on the bankrupt's case with the M & T on the preferential mortgage prevented petitioner from taking other employment. As soon as the M & T mortgage litigation was concluded in late 1969, your petitioner made job applications."

Attorney Leisner in Supplement to Petition and Report of Legal Services. Appendix (A-72)

Attorney Leisner took a vital part in the 1960's in law work for indigent Attica prisoners, appeared before the Governor's Commission investigating the cause of the Buffalo riots and chaired the Erie County Bar Association Civil Rights Committee for several years in the 1960's. (Record, Doc. #11, Memorandum, W. H. Brennan, page 11); (A-72). He took a job in 1970 because of economic hardship. Much has been said about the tragic Attica riot, which occurred in September 1971.

"The criminal justice system is at least as great a part of the problem of Attica as the correctional facility itself." p. xix.

"No aspect of law and order is more urgent than reform of the criminal justice system." p. xx

Forward To The Official Report of the
New York State Special Commission on Attica

If as John Lord O'Brian asserted the tradition of a bar sensitive to civil rights and vitally interested in human freedom and extending back through centuries among the English-speaking peoples is an important factor for our free society, then the importance of adequate and fair compensation to an attorney can be seen. Indeed, more pointedly one judge has written:

"As a final thought we would like to mention the fact that it is important to the creditors, the trustee, the bankrupt, the referee, and the public in general, that competent attorneys be attracted to do the work of attorney for the Trustee in Bankruptcy."

"The Courts must recognize that these men must be adequately and fairly compensated if they are to be expected to lend their skill and talent to this area of the law."
In re Seed Marketing Association 228 F. Supp. 812 (1964)

POINT II

IT WAS ERROR NOT TO RECOGNIZE THAT WHERE ATTORNEYS HAD DONE UNEQUAL AMOUNTS OF WORK THE CASES HOLD EACH IS TO BE COMPENSATED ON THE BASIS OF THE WORK HE HAS DONE

Where a number of attorneys are associated they are entitled to a reasonable fee for all of them and one of them cannot by accepting from a client less than a reasonable fee deprive the other attorneys of such a fee. Snell v. Frank Snell Sawmille Co. DC Ga. 271 F 696 aff'd 284 F 847 cert den 261 U. S. 619.

A case similar to the present where a number of attorneys had worked on the bankruptcy, one attorney had died, another firm had done limited advisory work although co-counsel and another firm had done the work, the amounts awarded the different counsel had to be based on the work each firm or counsel had done. Surface Transit Inc. v. Sax, Bacon & O'Shea 266 Fed. 862 (2nd Cir.). Mr. Garlock and Hays, St. John, Abramson and Hilbren were co-counsel and Mr. Lennox died. The court awarded \$132,500.00 to Mr. Garlock \$10,000.00 to the Hay's firm and \$2,500.00 to the estate of Mr. Lennox.

"Any attorney who hopes to obtain an allowance from the court should keep accurate and current records of work done and time spent. Lawyers are well aware that especially where services of the nature here involved are spread over a period of time and payment is virtually assured, they are valued principally on the basis of time required. Hudson v. Manhattan R.R. 339 F 2nd 114, 115 2nd Cir. 1964.

It follows that awards and acceptance of legal fees by 1) the deceased attorney John Swerloff's estate or 2) by the law firm of Goldstein, Navagh, Bulan and Chiari cannot deprive Attorney Leisner of adequate compensation of his legal services.

POINT III

IT WAS ERROR FOR THE BANKRUPTCY COURT TO REFUSE TO COMPENSATE ATTORNEY LEISNER FOR A) TAX WORK, FOR THE LEGAL WORK ON THE B) RENTAL PROPERTY C) CORRESPONDENCE ON LEGAL MATTERS

a. It was error for the bankruptcy court to refuse to compensate Leisner for the tax work done as an attorney.

The Bankruptcy court report of October 3, 1975 talks about tax returns as an administrative cost, and gives Leisner no credit for his tax work. The subsequent report derides the attorney and the returns he filed, and asserts a sure grasp of the return it believes should have been filed for 1967. Other courts have viewed the matter differently. One bankruptcy Judge held: "Stated in statutory terms the question is precisely what is the meaning of the language in Section 6012 b (3) that a trustee shall make the return of income for such a corporation." He held that the question must be considered in terms of the context of Title 28 U.S.C. Section 960 in conjunction with a non-operating trustee in bankruptcy." He stated "The Supreme Court obviously wished to leave open the meaning and effect of 28 U.S.C. 960 in conjunction with a non-operating trustee in bankruptcy." In re Statemaster 332 F Supp. 12 & 8 at 1258 (1971) opinion of referee (reversed on other grounds.)

The U.S. Supreme Court has characterized the question of bankruptcy carry back losses as a "difficult question of bankruptcy law". Segal v. Rochelle. 382 U.S. 375 at 376. (1966)

Also, under the annotations of Section 6012 I.R.C. where a receiver is appointed to collect rents and operate a mortgaged parcel of corporate real estate there is a special ruling, Feb. 21, 1933, 333 C.C.H. Paragraph 9123, which treats the matter differently.

Suffice it to say that at the trustee's request Leisner as an attorney, did all the bankrupt Federal and State tax work, the legal research, the investigation of the facts, the examination of the documents, the filing of the returns, the request for early audits, meeting with the auditing agent and furnished the documentation on the audit which spanned a year before closing. He finished his work with a report of no tax on income in excess of \$80,000.00 and obtained letters of no change after the audits were completed. Even if tax had been owed, Leisner, by law, must be compensated for his attorney's work on the bankrupt's Federal and State tax matters over seven years.

The Courts have held in New York that the kind of tax work done by Mr. Leisner constitutes practicing law.

"It is much too narrow a view, and one revealing inadequate perception to regard the tax law as merely a matter of accounting. More than most specialties in the law, tax law is drawn from and involved with many branches of the law."
Matter of N.Y. County Lawyer's Association Bercu
 272 App. Div. at 535 aff'd 299 N.Y. 728 87 N. E. 2nd 451.

Another case also supports Attorney Leisner's claim that his tax work constitutes legal services, Matter of N.Y. Co. Lawyer's Assn. v. Standard Tax & Management Corp. 181 Misc. 632. (Injunction against corporation advising subscriber how to effect tax saving under tax laws.)

It should be noted that Bercu (a non-lawyer) prior to 1946 routinely charged \$50.00 an hour for tax advice.

b. It was error for the bankruptcy court to refuse to compensate Leisner for his attorney's work in collecting rent and in legal matters affecting the property.

When rental difficulties came up with Coder at the request of the trustee he instituted collection efforts over a sustained period with demands, notices and finally brought a State court action for recovery of possession of the real property from Coder, broke the lease purchase option and drafted a new rider to the lease.

All this involved a great amount of work over three years.

John J. Bennett v Supreme Enforcement Corp., 250 App. Div.

265. The taking of assignments for the purpose of bringing suit on claims which prove otherwise uncollectible constitutes the unauthorized practice of law.

Engaging in the practice of handling dispossess proceedings for landlords constitutes "practicing law" within statute punishing unlawful practicing of law as a criminal contempt. N. Y. Judiciary Law Section 750 Subdivision 7 as added by Laws of 1937* C 3. In re Wenger 61 N.Y.S.2d 686, 186 Misc. 966; In re Collins 7 N.Y.S.2d 188, 169 Misc. 234.

The intricacies of waiver of nonpayment of rent, dispossess proceedings, waiver, canceling a lease, renewal, options, are treated in U. S. v Fornes 125 F.2d 928, at 933-940, (2nd Cir.) 1942.

The appearance of a corporate landlord in a summary proceeding for non-payment of rent by an agent who was not an attorney was unauthorized by law and required dismissal of the proceeding even though after objection the corporate landlord attempted to proceed by a duly licensed attorney. Finnox Realty Corp. v Lippman, 163 Misc. 870; Hillside Housing Corp. v Eisenberger, 173 Misc. 75.

Under Section 440 of N. Y. Real Property Law the dealing in real estate for a fee and collection of rentals for a fee are confined to licensed brokers. But excepted from the very beginning were "attorneys at law," Weinblatt v Parkway St. John's Place, 136 Misc. 743, 241 N.Y.S. 721 affirmed 229 App. Div. 865, 243 N.Y.S. 810, and referring to Ch. J. Cardozo in Roman v Lobe, 243 N.Y. 51 at 54.

The activities performed by Attorney Leisner respecting the rental properties with involved leases and options and difficult rents were matters which clients have brought to lawyers for centuries as persons worthy of trust and confidence and knowledgeable in property law and rights.

It was error for the bankruptcy court to refuse to compensate Attorney Leisner for his legal work respecting the rental properties.

*Now Judiciary Law Section 750 b

c. Denial of compensation for correspondence

It was error for the bankruptcy court to deny compensation for correspondence. No lawyer could function without correspondence. Not everything must be done by court pleadings and certainly telephone calls and memory are no good for disputed matters, over a long period of time.

In "Thoughts on Fees and Billing", J. N. DeMeo (Vice Pres. California Bar 1967-68, New York State Bar J., vol 44 at p.471, Attorney DeMeo describes the "Great Leak", failure to charge for correspondence, telephone calls and copy machine copies. Outgoing correspondence is described as a two or three unit charge, \$10 or \$15 with copy letters at a minimum of \$2 to cover the cost of preparing the copy, postage and handling.

The California lawyer points out that incoming correspondence must be opened, delivered to the attorney, reviewed by him and either filed or answered. This all costs him money on incoming correspondence and documents. He also points out the necessity of logging phone calls and recommends a standard two or three unit charge for short incoming and outgoing phone calls.

Gearhart of Binghamton, N. Y. quotes Eugene C. Merrill at an Illinois State Bar Economics conference on the necessity of keeping a record of time spent on correspondence.

"A letter may take fifteen minutes or an hour of the lawyer's time to dictate, check and sign to say nothing of the time used in assembling the information necessary for writing the letter." Merrill, Gearhart N.Y.S Bar Journal vol. 44 p. 458

The Courts also confirm these facts:

"For every hour spent by a lawyer at least another hour is spent by clerical help. This is rather obvious when we think of the lawyer dictating a letter to a stenographer who must spend time as she takes dictation, transcribes her notes and mails the letter." Paolillo v American Export Isorantzen Lines Inc. 305 F. Supp. 250, at 253, SDNY (1969)

Time spent answering correspondence may be included in the category of legal services. Midwest Engineering and Equipment Co. 440 F. 2d. 326 at 330, 7th Cir. (1971).

Not only do the authorities and the Courts hold that a lawyer's time on correspondence must be compensated, but it has been further stated that even the lawyer who attempts to keep careful track of the time can assume that 15 percent of the time he spends will be lost and not charged to any client. - Merill at a program of the Economic Institute of the Illinois Bar Assn. June 22, 23, 1960, cited by Gearhart in "The Priceless Ingredient in Setting Legal Fees.", N. Y. S. Bar Journal vol. 44 p. 458. In the same article Gearhart also states that the foregoing observation is confirmed by Daniel Cantor of Philadelphia, Pa.

d. Legal services on entanglements etc.

Attorney Leisner did much work with tangled labor claims, State Labor Dept. officials, tax officials on matters relating to other contractors, tangled insurance coverage, property assessments and taxes, backcharges and counterclaims, and a great amount of investigation and research on the M & T preference litigation. This involved a mass of records and papers and required locating, studying and analyzing the many financial statements of the bankrupt, its subsidiary and affiliates, and their intercorporate dealings.

Attorney Leisner searched out the evidence, the correspondence and the financial records to prove the facts surrounding the long prior and antecedent indebtedness of the bankrupt to the M & T on early unsecured notes. The investigation of facts surrounding bank overdrafts to creditors and employees, the preliminary facts for evaluation of accounts receivable by fiscal experts, the accounts payable, the tax situation, the back claims on pending construction work relating to an accurate picture of the bankrupt's financial condition at the time of the transfer. Attorney Leisner retained the evidence, files and documents for this litigation. His office was the document depository, and he at the outset took steps as co-liason counsel to coordinate the work so that pending litigation, negotiations, and ccrespondence on behalf of the bankrupt would take place without interruptions, delays or confusion.

Legal services such as dealing with union labor officials, taxation matters, recoveries from defaulting tenants, and elimination of labor claims were allowed to attorney Henry S. Hooker in the case of In re Equitable Office Bldg. Corp. 83 F. Supp. 561, S.D.N.Y. (1949) and 174 F 2d 827 rev'd on other grounds 175 F 2d 218. Another case from the Southern District of New York asserts:

"Much of the lawyer's work consists not in endless courtroom appearances or formal pretrial procedures but in careful investigation of his case, and he is entitled to be fairly compensated for his efforts in or out of court." at 252, J. McMahon, S.D.N.Y. Paolillo v. American Export Isbrandtsen Lines Inc., 305 F. Supp 250, (1969)

The denial of compensation for legal work on a) taxes, b) on matters pertaining to rental properties c) on correspondence, and d) the legal services on the bankrupt's many entanglements was error.

POINT IV

"BOILER PLATE" IS NO SUBSTITUTE IN THE CONSIDERATION OF A SETTLEMENT. ALL FACTORS OF THE SETTLEMENT AND ITS BENEFITS MUST BE CONSIDERED.

a. "boiler plate"

The first bankruptcy court refers to \$24,000.00 (A-85) from the settlement of a hotly disputed preference claim. (Oct. 3, 1975 Report) and again on April 26, 1976 the bankruptcy court states: "Basically the trustee's action to recover property worth \$100,000.00 was compromised for \$24,000.00. (A - 188)

The United States Supreme Court has held that "boilerplate" is no substitute for the evaluation of a settlement. It is essential to have a comprehensive consideration of all relevant factors. Protective Committee v Anderson 390 U. S. 414 at 434; also held in Newman v Stein 464 F2d 589 (2nd Cir) 1972.

b. The relevant terms of the settlement

In addition to the terms of the settlement stipulation, and the relevant factors which surround it, -

"Finally the view of experienced counsel as to the merits of the settlement is entitled to considerable weight." Entin v Barg 412 F. Supp. 508 at 515. (A-121, A-10)

In the same case the court held that "the benefit produced which amounts to about one fourth of claimed losses is highly favorable. Entin v Barg 412 F. Supp. at 518

The bankruptcy report fails to adequately report this litigation, the lawyers work involved, the settlement achieved or the benefit to the estate. (A-121, A-134)

The fact is that the mortgage contained an assignment of rents, the Bank sought the rents and an accounting of the rents. There was a lot of legal work caused by and done on the claim for the rents. By the settlement stipulation the M & T waived its claim to the rents. (E-4, paragraph (d); (E -29, paragraph 5); (claim to rents and accounting, (E-18 paragraph 11).

The law in New York State as opposed to some other circuits favors retention of the rents. There is of course the constitutional requirement of national uniformity in bankruptcy and presumably the M & T bank launched its attacks on the basis of national uniformity in the treatment of rent assignments. (A-181, extensive quotes of rules in the 5th Circuit and in the 3rd Circuit, in Mr. Brennan's letter to the Court).

In a celebrated and repeated article it was stated:

"Paper rights are worth, when they are threatened,
just what some lawyer makes them worth."

Robert H. Jackson, "County Seat Lawyer"
Vol. 36 ABAJ 497, 1950 excerpted from a
repeat of "Country Lawyers" Vol. 30 ABAJ 130.

Present in the negotiations were the prime rate on interest (A-165) financing considerations for a purchaser (A-165, line 5) and the tax picture on the rents. (A-165, line 10)

Here the M & T preference litigation involved real property which had been put up at auction on open market with top bids obtained of \$85,000.00. (A-148). The M & T had made a sustained efforts to obtain the rents collected of \$62,378.43. (E-18,19) The M & T gave up its claim to those rents and made a cash payment (E-3) of \$25,000.00 less a fraction of the current school taxes (E-4) or \$24,454.92. (E-29 para. 5) The retained rents and cash payment totaled \$86,833.25. (The price at auction bid was \$85,000 at about the same time as the settlement.)

The M & T also waived its right (E-31) to a claim based on a \$51,876.93 deficiency judgement entered in favor of the M & T in Supreme Court, Erie County. (A-100) Interest on the cash payment and the retained rents was a substantial percentage of the total interest in excess of \$21,338.59. (A-90 #15)

c. The benefits of the settlement

The payment of \$24,454.92 cash, the relinquishment of a claim based on a \$51,876.93 deficiency judgement and the waiver of the bank's vigorous claim to an assignment, an accounting, and the appointment of a receiver for the rents amounting to \$62,738.43 must be considered as something more than a \$24,000. cash settlement.

benefits of settlement (cont'd)

The additional fact that most of the interest of \$21,338.59 was earned on the \$86,833.25 rents and cash payment, considered with the \$51,876.93 judgement waiver truly reflects a much greater benefit to the bankrupt's estate than the mere cash settlement in the bankruptcy court's report. (A-10)

The refusal to recognize accepted legal services, and the substantial settlement benefits received by this bankrupt, was error which deprived Attorney Leisner of fair and adequate compensation.

POINT V - A

THE OVERHEAD COST OF A LAW OFFICE IS AN INDISPENSABLE FACTOR IN
A LAWYER'S FEE

There has been a continuing concern about the cost of operating a law office and the steadily rising costs, more than 30 years ago. In Hammer v. Tuffy 145 F. 2nd 447 at 451 2nd Cir. (1944) the court held that in the case of a lawyer that at least 30 percent of any fee to the attorney must be deducted for office overhead when it endeavored to arrive at fair compensation.

In volume 46 New York State Bar Journal p. 47, a study reports that the overhead of New York City law firms is now 42 percent.

In volume 58 Am. Bar Association Journal p. 165 Ernest decries the necessity of keeping track of minutes, lest the lawyer's concern for vital causes to our country be lost. "Inventions for Sale by the Minute." Cantor replies at 58 Am. Bar Journal 756 that time, skill, inventiveness and service can be put into a factor.

This court too has repeatedly held:

"Lawyers are well aware that especially where services of the nature here involved are spread over a period of time and ultimate payment is virtually assured they are valued principally on the basis of time required."

In re Hudson & Manhattan R.R. Co.
339 F. 2nd 114 at 115 (2nd Cir. 1964)

In this case, the work was done, the time was spent on the bankrupt's affairs and detailed time sheets were kept.

a. Cases on Economics of a Bankrupt Estate

Sometimes a bankrupt estate has no money left for general creditors or it has a limited amount of money for taxes and priority claims. But, even in such cases attorneys who work to create, or to defend or to preserve the bankrupt estate or to have the bankrupt estate fulfill its basic duties are paid for their work.

The fact that an allowance to the accountants would not permit payment to the general creditors should not cause a reduction. 505 F. 2nd 794 (7th Cir. 1974). In re Brooks v. Woodington

It is not a sufficient answer that there will be very little left for creditors in any event. Silver v Rosenberg 133 F2d 1020 (2nd Cir.)

"The benefits produced which amounts to about one fourth of claimed losses is highly favorable." Entin v Barg, 412 F. Supp. at 518.

In the present case all the great amounts of taxes are paid, all the priority claims of wage earners are paid, and a large general creditor class receives a highly favorable dividend on claims.

b. Law Office Economics

In 1921, Erie County Surrogate Louis Hart held that with the present high cost of living and the diminished purchasing power of the dollar, the expense of maintaining the city lawyer's office of the present day must be taken into consideration. In re Plimpton's Estate 186 N.Y.S. 257 (1921).

This court too, has long recognized that law office economics must be considered.

"Curiously the compensation of attorneys is frequently discussed and thought of as if the attorney was the beneficiary of the whole amount awarded without remembering that he, like the business man must first pay expenses before he can determine what he really earned for the support of himself and those dependent upon him." Straus v Victor Talking Machine Co. 297 F. 806 (2nd Cir.) 1924 -the court held that in an era of rising costs, rents, etc. overhead must be considered.

"It is matter of common knowledge that there has been a very great rise in rentals in business sections where attorneys ordinarily must have their offices as well as a substantial advance in the compensation accorded to their employees, and, when an allowance is to be made the courts must give these facts consideration."

Straus v Victor Talking Machine Co.
297 F. 806 (2nd Cir) 1924

If the Courts must give these facts consideration, it is a practical necessity for this Court to inquire into their application in this case, and to consider the economics of Mr. Leisner's Law Office.

c. The Economics of Mr. Leisner's Law Office

THE BANKRUPTCY JUDGE RECOGNIZED ON THE RECORD OF PROCEEDINGS IN THIS CASE THAT A LAWYER'S OVERHEAD (HIS COSTS ON WORK) IS \$25.00 AN HOUR (A 123, line 17). THIS IS CONFIRMED BY THE STATE BAR STUDY CITED ABOVE OF OVERHEAD BEING 42%. 42% OF ATTORNEY LEISNER'S 1965 NORMAL \$60 AN HOUR (A 175, line 62) EQUALS \$25.20 AN HOUR OVERHEAD.

Attorney Leisner expended 308 hours ($308 \times \$25.00 = \$7,700.00$) in the creation and preservation of the bankrupt estate, and was awarded \$17.84 an hour, which means that if the bankruptcy court ^{order} stands he has worked for nothing for the preferred or priority creditors so they are paid, their claims, in full, \$40,000.00 of taxes and \$12,000.00 of priority wage claims and he has subsidized the general creditor class so that they receive \$54,782.61 or more than a 28% dividend.

Attorney Leisner has not only worked for nothing in the bankruptcy since 1966, but he has spent \$7,700.00 to work for nothing on this case. He has been awarded nothing for his work and \$5,500.00 for his \$7,700.00 overhead expenditure.

While the funds obtained and protected for the bankrupt have been steadily accruing interest over the years, Attorney Leisner has been paying interest to the banks over the years.

A court of equity cannot compel an attorney to subsidize the general creditor class by \$2,200.00 and have him work for nothing over many years in a case where large claims for federal and state taxes, and wage earners are paid in full and a highly successful dividend is brought to the general creditor class.

POINT V - B

THE EFFECT OF TAXES ON THE LAWYER'S FEE CANNOT BE IGNORED

As stated in Hammer v Tuffy, 1944; In re Plimpton's Estate (1921); and Straus v. Victor Talking Machine Co. 2nd Cir. 1924; the courts held it essential to consider overhead to determine a lawyer's take home pay. "What he really earned for the support of himself and those dependent upon him." From these earlier cases a corollary follows in today's society that income taxes must be taken into account.

"Taxes must be taken into account in passing upon the reasonableness of an attorney's fees." * * *

"Again the court must take into account that today rents, clerical assistants and office supplies are far in excess of what they were out a few years ago." U. S. v 115.128 Acres of Land More or Less in Newark N. J., D.N.J. 101 F. Supp. 796 at 799

A fee of \$211,500 was not unreasonable in view of the fact that income taxes of special counsel would amount to \$167,533.50 which leaves him with a net take home pay of \$43,716.50 U. S. v 115.128 Acres of Land Supra.

The holding that taxes must be taken into account in determining a lawyer's fee is important as can be seen by the subsequent analyses:

	At \$18,500	for more than 320 hours
	42%	overhead or cost of
Preliminary	7,770	work on 320 hours
computation	18,500	
(please see	-7,770	overhead **
next page)	10,730	
the computation	-2,422	Fed tax on 10,730
here deducts	8,308.00	
overhead expensed	847.67	Soc. Sec. tax in '77 (7.9%)
in 1960's	7,450.33	
	501.10	N. Y. State tax on \$10,730
	* \$6,949.23	

*Attorney Leisner's optimum take home pay for services in bringing 100 percent to the government taxes, 100 percent to the priority wage claims and over 21 per cent dividend to the general creditors.

** The overhead was expensed at lower rates in the 1960's and cannot be deducted. This gives some idea of the tax impact on a fee, but the next analysis gives a much more accurate picture.

BUT

No lawyer can survive on this one fee or case and if Leisner nets \$7,777 of other income this year, the tax rate is applied on \$18,500. in full (at even higher rates than those below.)

\$18,500.	regular hourly rate for work done
-5,406	Federal Tax
<hr/> 13,094	
-1,208	Soc. Sec. Tax
<hr/> 11,886	
-1,225	N. Y. State Tax
<hr/> 10,661	
-7,700	Overhead or cost on work done for
<hr/> \$2,961	the bankrupt -expended in 1960's

Attorney Leisner's net is \$2,961. on the \$18,500. fee.

The general creditors presumably had a gross profit figured into their claims, had business loss write-offs and relied on the credit of the bankrupt. If they had done business with the bankrupt over the years as is the case in construction, they also had profits, and deductions, for bad debt reserves, on their tax returns.

All Federal and State taxes are paid in full.

Wageearners claims are paid in full. The weekly wage for a construction working fulltime and overtime on metal window construction on large public buildings at union rates, with travel allowances for out of town work, (the jobs extended across the state and into a number of other states) in 1966 was a fair wage. Conferences with the State Labor department to untangle the union wellfare fund, the vacation fund and the retirement fund resulted in prompt payments to the men and the funds, and prompt W-2's.

Attorney Leisner's overhead has already been expended over seven years ago while he pays interest and while the bankrupt estate earned interest of \$21,338.59 on the funds brought into the estate, with no tax on that interest.

New York State Taxes on Lawyers

A number of attorneys who earned a fee which spanned several years of work have sought the benefits of income averaging in New York State. Bonney v State Tax Comm. 43 AD2d 879, 351 N Y S 2d 187; Nicit v State Tax Comm. 43 AD2d 879, 351 N Y S 2d 187; Alaimo v State Tax Comm., 69 Misc. 2d 484, 330 N Y S 2d 231. Attorney Bonney, Attorney Nicit, and Attorney Alaimo were each denied income averaging under the State Tax law. The Federal and State Tax table are appended to this brief with circled indicia for the court.

The holding of the court in U. S. v 115.128 Acres of Land etc 101 F. Supp. 796 at 799 that taxes must be taken into account in passing upon the reasonableness of an attorney's fee, - "Again the court must take into account that today rents, clerical assistants and office supplies are far in excess of what they were but a few years ago." at 799, would be applicable to this case where Attorney Leisner's net is \$2,961 on the \$18,500. legal fee.

On April 16, 1975 Attorney Leisner "...the overhead of the attorney is a very potent consideration. And I would also point out to the Court the factor of income taxes today is a very substantial consideration in any attorney's practice."

The COURT: "I'm aware of that Mr. Leisner." * * * "the average overhead was about \$25 an hour for an attorney's office in a Metropolitan area." (A-123, l. 10 to 18. The foregoing was the Bankruptcy Court.

Later this was brought to the attention of the District Court in Dec. 1975 (A-96 #38) that the fee allowance was not adequate nor realistic in terms of law practice, overhead and taxes, nor does it take into account essential standards such as the work done, the results accomplished.

POINT VI

THE MIXED CONCLUSIONS OF THE BANKRUPTCY COURT ARE
BASED ON ERRORS OF LAW AND ERRORS OF FACT

It is rather difficult to discern the bankruptcy courts conclusions as they appear to be mixed conclusions of law and fact.

The earlier part of this brief directed to errors as a matter of law in denying compensation to Attorney Leisner because the bankruptcy court apparently felt it must award equal compensation to co-counsel even though they had worked on different matters and done different amounts of work. It also held it must deny compensation for a) tax work, b) the work on the rental properties, c) the correspondence, d) the work on the bankrupt's great entanglements with wages, insurance, government authorities in labor and taxes and it incorrectly evaluated and reduced the M & T settlement to a lump sum phrase.

A district judge called upon to review a referee's order is entitled to have from the referee an adequate and accurate statement of the facts and the law upon which he relied in making his order. U.S. Machinery Movers v. Bellas 280 F. 2d 91 at 94 (1960) 8th Cir.

Findings of fact are clearly erroneous when (1) not supported by substantial evidence (2) contrary to the clear preponderance of the evidence or (3) based upon an erroneous view of the law.

First National Bank of Clinton
Missouri v. Julian 383 F. 2d 314
at 320 (8th Cir.) 1967.

"The judiciary properly holds administrative officers to high standards in the discharge of the fact finding function." U.S. v. Fornes 125 F. 2d 928 at 942 2nd Cir. 1942.

A. Erroneous finding of frivolousness
(a) No evidence for the finding

There is not a glimmer, not a scintilla of evidence to support a finding of frivolousness against attorney Leisner who has worked

for years to honorably fulfill the lawyers oath and obligation to the poor before Chief Judge Brennan and Chief Judge Roley in the DeFlumer cases and before Chief Judge Henderson in the DeFlumer and Stephanie Bauer cases and before the judges of this circuit on the same cases.

(b) The evidence refutes the finding

The evidence refutes a finding of frivolousness in this case. This has been a tangled, involved, lengthy bankruptcy with the death of the original attorney, the replacement of the bankruptcy judge, the death of Chief Judge Henderson, the death of the Swerdloff Executor, the recent death of Mr. Kavinoky who was ill and not present to speak for Mr. Swerdloff.

William Brennan a past president of the Erie County Bar Association and a leader at the bar who was counsel for Mr. Leisner on the motion for reconsideration and the hearing on February 12, 1975 in the Bankruptcy Court and on May 17, 1976 in the District Court would never sanction or be a party to a frivolous proceeding.

Chester Pearlman, Esq. a past president of the Erie County Bar Association and a dean of the bar vouched for the propriety of Mr. Leisner's requested fee. (Exhibit 5)(p.35 of exhibits)

B ERRONEOUS FINDING ON THE \$62,378.43 RENTS

a) Fact

The bankruptcy court found that the \$62,378.43 rents were not involved in the settlement. The fact is that the M & T did give up its vigorous claim to the rents which totaled \$62,378.43. (#5 p. 29 of exhibits Exhibit 4; settlement stip. p. 4 (d) exhibits)

(b) Law. Concept of justiciable controversy on the rental claim

The bankruptcy court ignored concepts of (1) a justiciable controversy maintained by an opponent (2) the issues or dimensions of the controversy (3) the caliber of the opposition, or the ability of the opposing counsel and the intensity with which they pursue their battle (4) the probability of success.

In the objection to the bankruptcy court report filed with

Judge Curtin it is stated "The principals and their counsel in this bankruptcy proceeding certainly did not accept that such case law applied to the instant matter." Perhaps a more accurate way of stating this is that the bankruptcy court report, in asserting the suspicion that attorney Leisner was under a delusion, ignored the fact that the rents were claimed by the M & T and that the principals and their counsel recognized that there was a serious claim and a justiciable controversy over the rents and it threw the rents into question. There was a considerable struggle over the rents over quite a lengthy time, that the M & T had retained one of the leading law firms to support its contention, and that the M & T gave up its claim to the rents only after the considerable struggle and much work. As pointed out (in A-195) this was confirmed by 1) M & T officials 2) William H. Gardner 3) Louis Sternberg, trustee in demanding an indentification agreement 4) Hon. James A. Privitera, Bankruptcy Referee, 5) Attorney Edward H. Kavinsky 6) Attorney David Goldstein 7) the settlement stipulation. Attorney Leisner did not share this belief alone.

The point of all this is that attorney must be compensated for his work in preserving the rents.

Naturally if the probability of success for the attorney was extremely slight, he should receive a premium for his work. But it does not follow that if the probability of success was great that an attorney's work must be done for nothing. The fact that the M & T made a vigorous attack in order to obtain the rent required him to oppose and defeat that claim, and he must be compensated for his time and work in defeating that claim.

C. Erroneous finding of duplication

The bankruptcy court refers to duplication A-84, it talks of "experienced counsel merely sitting by to learn" A-187 (referring to Mr. Goldstein) and it talks of the laboring oar A-178.

This appears to be a basis of the bankruptcy courts report for a fear of duplication by counsel and an effort to bring the co-counsel or the trustee vis a vis or into conflict. But this is not the case. David Goldstein is a respected member of the bar

and Mr. Leisner's report (A-4, Item 9) and detailed time sheets, e.g. A-13-18 show that there was no duplication, but rather co-ordination of the work. In the case of the M & T on those occasions when he and David Goldstein appeared jointly or conferred, they were always faced by two members of the Hodgson, Russ, Woods, Goodyear and Andrews firm and a senior bank official. When confronted by one of the largest law firms in Western New York and one of the largest banks in Western New York, Mr. Goldstein's presence was not a duplication, but a practical necessity. The question of duplication has been treated in Mooney v. Willys Overland Motors 106 F. Supp. 253 af'd 204 F.2d 888, where the Court recognized that frequently the presence of another lawyer is helpful, required, or necessary.

So too, in the case of Louis Sternberg the trustee, a very respected attorney, there is an implication that Mr. Leisner seeks to charge for ministerial work of the trustee. But Mr. Sternberg did not foist off his trustee functions and duties to Mr. Leisner. Mr. Sternberg did collect all the routine rents from the West End Brewing Company and he did do all the banking, all the conferring, correspondence and many tasks which are to be expected of a trustee in a highly responsible fiduciary situation. (A-93, Item 23, 24)

The trustee was not expected to do the law work of actions in state courts, cancelling leases, litigating or solving the bankrupt's tangled legal affairs, or tax problems, or to solve the wage and payroll problems with labor officials, or the tangled insurance coverage, or the real property assessments. This was the precise reason that co-counsel had been appointed. Services as counsel are different from the trustee's function. Midwest Engineering & Equipment Co. 440 F.2d at 329.

Services as co-liason counsel, and as document depository were held to stand on a solid footing and the importance of co-ordinating the efforts of counsel, was recognized in Penn. Cent. Sec. Litigation 416 F. Supp. 907 at 924 and 925, (Ch. J. Joseph S. Lord III) "Because of the leading role played by petitioner we will not discount time in reviewing papers and documents. Given the extent of its participation, petitioner had a real need to inspect and review the papers involved." 416 F. Supp. at 921.

d. Inadequate consideration of facts

Correspondence (for example 4 hours a month or 1 hour a week at the height of the bankruptcy in Dec. 1966, or 1 hour in two months, Jan. , Feb. 1968 or 2 hours in 6 months in 1969) was a necessity for this bankrupt and cannot be legitimately derided or ridiculed.

The Bankruptcy Court report states that the "complexity" of the tax returns "will be noted at a glance." The attorney's fee application did not claim that the returns themselves were complex. The original fee application (A-5 paragraphs 11 and 12) and the motion for reconsideration (A-95, paragraphs 32 and 33) describe investigation, research, selection and cataloging of records, requests for early audits, the actual audits of the returns and supporting papers, conferences with the U. S. Tax examiner with documentation for him by way of prior financial statements and records and other loss transactions from the papers of the bankrupt. As a result of that tax work, a report of no change and no tax due on rent and interest receipts of \$84,717.02 was received from the Internal Revenue Service. The work was lengthy, intensive and complicated and this work was performed by Attorney Leisner alone. For example the request for audit, the actual audit, the conferences, the documentation, down to the final reports of no change covered the period of almost a year in 1970 to 1971.

To judge tax work of a tax lawyer by a glance at tax returns or to judge legal work or litigation by the number of covers on legal papers does violence to an adequate consideration of a lawyer's work.

The fact that there was no tax on \$84,717.02 of interest and interest was ignored. The fact that the affairs of the bankrupt were tangled and involved with records at three locations was ignored. The fact of the construction contracts with liens, backcharges and counterclaims was ignored. The difficulties with the rental properties, the rentals and the cancellation of the renewal and purchase options and the actions in the state courts were ignored. The entanglements with the wage claims, the labor department, the insurance, the tax assessments were ignored. The fact that there would not have been enough money in this estate to pay priority claims, but for the work of the lawyers, was ignored.

In this case the mixed conclusions of the bankruptcy court were based on errors of fact and errors of law and require correction. "The judiciary properly holds administrative officers to high standards in the discharge of the fact finding function." U. S. v. Fornes, 125 F. 2d 928 at 942, 2nd Cir. 1942.

The reports of the Bankruptcy Judge are in sharp contrast with the care exercised by a Federal Judge in Paolillo v. American Export Isbrandtsen Lines Inc. 305 F. Supp. 250 (1959), or by a bankruptcy referee in In re Seed Marketing Association 228 F. Supp. 812 (1964).

POINT VII

THIS COURT SHOULD MAKE AN AWARD COMMENSURATE WITH THE SERVICES RENDERED.

Findings which were unsupported by the record and findings which were conclusions of law, ultimate findings or mixed findings of fact and law were not binding upon the Court of Appeals in review. Official Creditors Committee of Fox Markets v Ely 337 F.2d 461 (9Cir) 1964

On appeals in equity the appellate court is bound to decide the case, to render such a decree as the court below should have made and to send down directions to enter it accordingly. Vol 14 Cyclopedia of Federal Practice (Callaghan) Section 68.84 and 68.85 decision and disposal of case.

Appellate Courts are themselves experts as to reasonableness of attorney fees and may in the interest of justice fix fees of counsel albeit in disagreement with the views of the trial courts. Columbian Nat. Life Ins Co. v. Keyes 138 F2d 382, cert. den. 321 U. S. 765 2nd Cir.

In Davitt v. O'Connor 73 F2d 43 attorney's services for collecting rents and making sales of realty should approach commissions payable to agent. On net receipts of \$42,254.51 the attorney received a compensation of \$5,000.00. The attorney received other fees for other services as well.

In McAvoy v. Harron 26 AD 2d 452, 275 N Y S2d 348 where McAvoy performed substantial services for defendant, drew leases, evicted tenants, filed income tax returns, made claims for refunds, forestalled creditors actions, preserved defendants property, keeping the real and trust property free from creditors liens and in preserving trust assets as well as obtaining income for defendant, reasonable value of services was \$20,000. McAvoy received and disbursed \$186,988.71, \$26,286.71 of which was rent collected by him. McAvoy kept no time records, merely some running notations on his checkbook stubs, and he was dead at the time the action was commenced. "The record being adequate for a determination on the merits, this court will modify the Judgement of the Court below and grant the Judgement which the Court below should have granted."- McAvoy v. Harron supra

A checklist of factors courts customarily consider follows:
CREATION OF AN ESTATE The creation of an estate was largely contingent upon the success of the attorney's work.

\$86,833.35* M & T settlement or retained rents & cash payment
 21,338.59* Interest largely on above funds
 35,288.67 Receipts obtained from disputed claims and accounts rec.
 9,487.25 Auction of personalty and refund claims

152,947.86 and additional interest brought the total to
 \$154,196.34

Approximately *\$108,000.00 of receipts was involved in the litigation involving the preferential transfer of the real property and the claims on the rentals, when the interest is taken into account. These moneys were at issue in the litigation on the M & T transfer as the M & T claimed both a mortgage and assignment or rents.

The work on the leases, the assessments, the purchase options and the renewal options pertained to the same rental properties from which the \$62,378.43 rental income was received and which rental income the M & T strenuously sought to take.

The tax work done by attorney Leisner and resulted in a report of no change and of no tax for all years involved on rental and interest income exceeding \$85,000.00.

AMOUNT OF TIME INVOLVED Here the bankruptcy was very lengthy and a great amount of time was required and expended to accomplish all the many works involved. Attorney Leisner worked 320 hours on the bankrupts matters.

STANDING OF THE ATTORNEYS A factor which may also be considered is the standing of the attorneys in the legal profession for ability skill and integrity. Attorney Leisner has practiced law for over 20 years and is an experienced attorney in good standing.

AMOUNTS INVOLVED Total receipts were \$154,196.34. The rents much of which required legal services to obtain from the Coder tenancy and which then became involved in the M & T litigation and the cash payment from the M & T totaled \$86,833.35. Interest brought this to over \$108,000.00. Interest brought this to over \$108,000.00. On the tax matters, the interest and rental income was over \$85,000.00 and a report of no tax and no change was obtained.

RESPONSIBILITY IMPOSED The responsibility for the litigation and settlement of the litigation on the preferential transfer rested on the cocounsel and the major portion or it was imposed on Attorney Leisner. The litigation on the M & T preferential transfer began in Attorney Leisner's office. (A-149) The litigation file and evidence was in Attorney Leisner's office. (A-6,7 #13, #14)(A-156) The litigation ended in his office. (A-160, Exhibit 4, E 27).

The responsibility for the bankrupts tax problems rested on Attorney Leisner. (E-37, E-38) The responsibility for difficulties on the rents and the rental properties rested upon Attorney Leisner.

The responsibility for the actions in the state Courts to cancel the purchase and renewal options on the leases rested upon Attorney Leisner. The action on this feature by both co-counsel in the Federal Court was deferred, and the subsequent action in the State Court was handled by Attorney Leisner alone. The responsibility for the mass of records and evidence and the coordination of the co-counsel rested upon Attorney Leisner. The responsibility for the collection of accounts receivable and litigation of these and the construction liens etc rested almost entirely on the Goldstein office. All of the responsibility rested on Attorney John Swerdloff in the beginning, but he died shortly after. Responsibility for many other matters rested on both cocounsel and they worked harmoniously to bring about a successful result.

DIFFICULTY OF THE LITIGATION The M & T preferential transfer was a close question involving difficult questions of solvency or net worth law. The bankruptcy itself was extremely tangled due to the nature of the bankrupt's business with construction contracts across the State of New York, and other states. Also the bankrupt had subsidiary and affiliated corporations.

CALIBER OF THE OPPOSITION (In re Belfort Corp. 136 F. Supp. 1,4 and 5.) The Hodgson Russ Woods Goodyears & Andrews firm by William F. Gardner generally with another lawyer associate as well as with trust officers.

RESULTS ACHIEVED AND BENEFITS OBTAINED Gross assets of \$154,196.34 were received in this estate. The litigation against the M & T preferential transfer and all of the other work brought about a very successful result. Had this not been the case there would not be enough money to pay the taxes, priority claims and secured creditors. Taxes, \$40,303.85, wages \$12,101.73, and secured payments \$1,358.75. (A-83) The general creditors receive in excess of a 20% dividend.

EXPERTISE IN SPECIAL FIELDS OF LAW The Bankrupt received rentals claimed by the M & T of \$62,378.43 claimed by the M & T and interest of over 21,338.59 and after much work and thorough legal research to document the same to show no income tax liability, reports of no change were made, on audits, and no tax was required on over \$64,417.02. Attorney L. Robert Leisner has spent over 20 years largely in the tax field. In Application of Securities & Exchange Comm. 183 F. Supp. 689 at 704 tax counsel was paid \$27,500.00 for 273 hours of work and the same case reports that another tax counsel was paid \$15,000.00 for 150 hours of work.

WHETHER THIS WORK PRECLUDED OTHER EMPLOYMENT The attorney L. Robert Leisner was precluded from full time employment elsewhere from 1966 to June 1970. In 1970 he took work in Albany as a hearing officer full time for the State of New York, after the main work in this bankruptcy was completed and utilized leaves of absence for later work herein. The case imposed financial hardship upon Attorney Leisner.

AMOUNT OF FEE TO OFFICE OVERHEAD AND TAXES That \$25 an hour or over \$7,770.00 for Attorney Leisner's overhead and cost of work has already been expended and the enormous State and Federal taxes leave him with \$2,961.00 take home pay on \$18,500. is shown in POINT V.

INFLATION In 1921 Surrogate Louis Hart held that note must be taken of the high cost of living, Plimpton's Estate, supra. The general reduction in the value of the dollar is a factor of some bearing on the fee to be allowed for his services. This Court in Straus v. Victor Talking Mach. 297 F. at 806 (2nd Cir) 1924 noted "standards necessitated and developed by the fact that there has been a great increase in the cost of conducting law offices, as well as the increase in the cost of living." This court indicated a concern for the lawyer - to "determine what he really earned for the support of himself and those dependent upon him." Straus, supra.

BENEFITS OBTAINED In the beginning of this bankruptcy, there would not have been enough money to pay the taxes and wages. At the end, there is enough to pay wages, taxes, and secured claims in full and to pay all of the general creditors more than a 21% dividend, based on full payment of his \$18,500. fee for services rendered.

THE ATTORNEY'S NORMAL FEE In Lindy Bros. Bldrs of Phila. v. Am Rad it was said: "The amount to which the attorney would be entitled on the basis of an hourly rate of compensation applied to the hours worked provides the only reasonable objective basis for valuing an attorney's services." This may be modified by the contingency factor, if the likelihood of success was slight. The fee may be increased or decreased if the work was unusually good or bad. "The value of an attorney's time generally is reflected in his normal billing rate" Lindy Bros Bldrs of Phila. v Am. Rad & S 487 F2d at 161 at 167. Attorney Leisner charged \$60 an hour in 1965 and his hourly rates were going higher in the later part of the 1960's. (A-175) "If the result was very good and the time consumed was very little you could double or triple time" "I found that taxpayers understood that very well because you had to have a very good good background a lot of study in it and they understood that. I couldn't go in and accomplish a great result for them and go on a time basis and have a meager hourly rate." (A-174) The \$60 normal hourly rate applied to the 320 hours worked is \$19,200.00. This would be the attorney's normal fee. After the State and Federal taxes and allowing for the overhead (cost on work done for the bankrupt) Attorney Leisner's net from the \$18,500.00 fee is \$2,961. (POINT V -B, page 41 supra).

ADEQUATE COMPENSATION TO ATTORNEYS The economical spirit of the Bankruptcy Act does not require or justify reducing a requested fee where by all other standards it is a fair and reasonable one. Jacobowitz v Double Seven Corp. 378 F2d 405 at 408 Competent attorneys must be adequately compensated in bankruptcy cases so as to be encouraged to lend their skill and talent to the bankruptcy area of law. In re Seed Marketing Assoc. 228 Fed. Supp. 812. In that case assets were \$4,204.79, priority claims were \$16,862.61, and unsecured claims were \$53,146.04, at page 817 finding #4. The application was for \$25,731.00 fees and \$309.75 expenses, page 814, in opinion of referee, and at 823 he stated he could not allow 40% of the assets but only about $33\frac{1}{3}$ of the assets. The District Court however stated that the possibility of gaining remuneration was contingent upon creating an estate and was very significant. The Court also asserted that it would give weight to the fact that the request for fees was uncontroverted and its knowledge of the attorney's competence and the value of his services in much improving the condition of the estate, and the Court increased the allowance to the full sum requested of \$25,731.00.

In Midwest Engineering and Equipment Co, 440 F2d 330 at page 329, the court cites several cases where the Courts allowed the attorney 38% of the amount recovered. It also cites several cases where the attorneys were awarded \$75. an hour.

NO OPPOSITION BY CREDITORS In this case there was no opposition by the trustee, by the co-counsel, by the creditors, or from any quarter. (A-175). In both the Jacobowitz and the Seed Marketing cases, the Courts stressed the fact that there was no opposition to the requested claim for compensation. They also stressed the overall result obtained, the attorney's work, and the success in increasing the small estates. The Courts sought to avoid tables and formulas and to compensate the attorney fairly for his services to the bankrupt estate and to the public and they avoided seeking to pay preconceived percentages to the general creditors, or to the attorneys. The Courts dealt with the attorneys fees as part of the total picture and they dealt with the bankrupt estate
(cont'd)

as one unit, stressing that in bankruptcies, on a case by case by case basis, the variables in secured claims, the variables in priority claims, some large, others little or none, and the variables in the number and claimed amounts of the general creditors, when modified by the many other factors outlined in the above pages result in so many permutations that rigid tabulations and formulas are literally precluded. Such Courts refused to sacrifice just compensation to attorneys for percentages, formulas, or classes of creditors.

The Courts stressed the requirement to compensate the attorneys adequately, with justice to the estate they served well and successfully. The above factors having been used by the Courts, they may be helpful to the Court in acting upon the appellant's appeal for compensation.

In this case Attorney Leisner has worked over 320 hours (A 96, item 35) to create and preserve the bankrupt estate, which at his normal billing rate of \$60 an hour in 1965 (A 175, line 1 & 2) is equivalent to over \$19,200. The balance after taxes on an \$18,500 fee is \$10,661. (Point V-B, page 41). After overhead (cost of work done) of \$7,770, the take home pay on the \$18,500 fee is \$2,961. (Point V-B, page 41).

CONCLUSION

This Court should grant an award commensurate with the services rendered, with costs here and in the Courts below.

Respectfully submitted,

L. Robert Leisner

L. ROBERT LEISNER

Attorney

Pro se, as appellant

2 Kimberly St. #C
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If line 47 (taxable income) is—		And you are—				If line 47 (taxable income) is—		And you are—				If line 47 (taxable income) is—		And you are—			
Over	But not over	Single	Married filing sepa- rately	Head of a house- hold	Married filing jointly *	Over	But not over	Single	Married filing sepa- rately	Head of a house- hold	Married filing jointly *	Over	But not over	Single	Married filing sepa- rately	Head of a house- hold	Married filing jointly *
Your tax is—						Your tax is—						Your tax is—					
14,950	15,000	3,512	3,930	3,253	3,004	16,750	16,800	4,094	4,656	3,780	3,477	18,550	18,600	4,717	5,429	4,344	3,981
15,000	15,050	3,528	3,950	3,267	3,016	16,800	16,850	4,111	4,677	3,796	3,491	18,600	18,650	4,735	5,451	4,360	3,995
15,050	15,100	3,543	3,969	3,281	3,029	16,850	16,900	4,128	4,698	3,811	3,505	18,650	18,700	4,753	5,474	4,376	4,009
15,100	15,150	3,559	3,989	3,295	3,041	16,900	16,950	4,145	4,719	3,827	3,519	18,700	18,750	4,771	5,496	4,392	4,023
15,150	15,200	3,574	4,008	3,309	3,054	16,950	17,000	4,162	4,740	3,842	3,533	18,750	18,800	4,789	5,519	4,408	4,037
15,200	15,250	3,590	4,028	3,323	3,066	17,000	17,050	4,179	4,761	3,858	3,547	18,800	18,850	4,807	5,541	4,424	4,051
15,250	15,300	3,605	4,047	3,337	3,079	17,050	17,100	4,196	4,782	3,873	3,561	18,850	18,900	4,825	5,564	4,440	4,065
15,300	15,350	3,621	4,067	3,351	3,091	17,100	17,150	4,213	4,803	3,889	3,575	18,900	18,950	4,843	5,586	4,456	4,079
15,350	15,400	3,636	4,086	3,365	3,104	17,150	17,200	4,230	4,824	3,904	3,589	18,950	19,000	4,861	5,609	4,472	4,093
15,400	15,450	3,652	4,106	3,379	3,116	17,200	17,250	4,247	4,845	3,920	3,603	19,000	19,050	4,879	5,631	4,488	4,107
15,450	15,500	3,667	4,125	3,393	3,129	17,250	17,300	4,264	4,866	3,935	3,617	19,050	19,100	4,897	5,654	4,504	4,121
15,500	15,550	3,683	4,145	3,407	3,141	17,300	17,350	4,281	4,887	3,951	3,631	19,100	19,150	4,915	5,676	4,520	4,135
15,550	15,600	3,698	4,164	3,421	3,154	17,350	17,400	4,298	4,908	3,966	3,645	19,150	19,200	4,933	5,699	4,536	4,149
15,600	15,650	3,714	4,184	3,435	3,166	17,400	17,450	4,315	4,929	3,982	3,659	19,200	19,250	4,951	5,721	4,552	4,163
15,650	15,700	3,729	4,203	3,449	3,179	17,450	17,500	4,332	4,950	3,997	3,673	19,250	19,300	4,969	5,744	4,568	4,177
15,700	15,750	3,745	4,223	3,463	3,191	17,500	17,550	4,349	4,971	4,013	3,687	19,300	19,350	4,987	5,766	4,584	4,191
15,750	15,800	3,760	4,242	3,477	3,204	17,550	17,600	4,366	4,992	4,028	3,701	19,350	19,400	5,005	5,789	4,600	4,205
15,800	15,850	3,776	4,262	3,491	3,216	17,600	17,650	4,383	5,013	4,044	3,715	19,400	19,450	5,023	5,811	4,616	4,219
15,850	15,900	3,791	4,281	3,505	3,229	17,650	17,700	4,400	5,034	4,059	3,729	19,450	19,500	5,041	5,834	4,632	4,233
15,900	15,950	3,807	4,301	3,519	3,241	17,700	17,750	4,417	5,055	4,075	3,743	19,500	19,550	5,059	5,856	4,648	4,247
15,950	16,000	3,822	4,320	3,533	3,254	17,750	17,800	4,434	5,076	4,090	3,757	19,550	19,600	5,077	5,879	4,664	4,261
16,000	16,050	3,839	4,341	3,548	3,267	17,800	17,850	4,451	5,097	4,106	3,771	19,600	19,650	5,095	5,901	4,680	4,275
16,050	16,100	3,856	4,362	3,563	3,281	17,850	17,900	4,468	5,118	4,121	3,785	19,650	19,700	5,113	5,924	4,696	4,289
16,100	16,150	3,873	4,383	3,579	3,295	17,900	17,950	4,485	5,139	4,137	3,799	19,700	19,750	5,131	5,946	4,712	4,303
16,150	16,200	3,890	4,404	3,594	3,309	17,950	18,000	4,502	5,160	4,152	3,813	19,750	19,800	5,149	5,969	4,728	4,317
16,200	16,250	3,907	4,425	3,610	3,323	18,000	18,050	4,519	5,181	4,168	3,827	19,800	19,850	5,167	5,991	4,744	4,331
16,250	16,300	3,924	4,446	3,625	3,337	18,050	18,100	4,537	5,204	4,184	3,841	19,850	19,900	5,185	6,014	4,760	4,345
16,300	16,350	3,941	4,467	3,641	3,351	18,100	18,150	4,555	5,226	4,200	3,855	19,900	19,950	5,203	6,036	4,776	4,359
16,350	16,400	3,958	4,488	3,656	3,365	18,150	18,200	4,573	5,249	4,216	3,869	19,950	20,000	5,221	6,059	4,792	4,373
16,400	16,450	3,975	4,509	3,672	3,379	18,200	18,250	4,591	5,271	4,232	3,883						
16,450	16,500	3,992	4,530	3,687	3,393	18,250	18,300	4,609	5,294	4,248	3,897						
16,500	16,550	4,009	4,551	3,703	3,407	18,300	18,350	4,627	5,316	4,264	3,911						
16,550	16,600	4,026	4,572	3,718	3,421	18,350	18,400	4,645	5,339	4,280	3,925						
16,600	16,650	4,043	4,593	3,734	3,435	18,400	18,450	4,663	5,361	4,296	3,939						
16,650	16,700	4,060	4,614	3,749	3,449	18,450	18,500	4,681	5,384	4,312	3,953						
16,700	16,750	4,077	4,635	3,765	3,463	18,500	18,550	4,699	5,406	4,328	3,967						

* This column is to be used by a qualifying widow(er).

If line 47 (taxable income) is—		And you are—				If line 47 (taxable income) is—		And you are—				If line 47 (taxable income) is—		And you are—			
Over	But not over	Single	Married filing separately	Head of a household	Married filing jointly *	Over	But not over	Single	Married filing separately	Head of a household	Married filing jointly *	Over	But not over	Single	Married filing separately	Head of a household	Married filing jointly *
Your tax is—						Your tax is—						Your tax is—					
5,350	5,400	979	993	921	881	8,550	8,600	1,734	1,791	1,612	1,507	11,750	11,800	2,569	2,758	2,384	2,211
5,400	5,450	989	1,004	931	891	8,600	8,650	1,746	1,805	1,624	1,518	11,800	11,850	2,583	2,774	2,396	2,222
5,450	5,500	1,000	1,015	940	900	8,650	8,700	1,759	1,819	1,635	1,529	11,850	11,900	2,596	2,790	2,409	2,233
5,500	5,550	1,010	1,026	950	910	8,700	8,750	1,771	1,833	1,647	1,540	11,900	11,950	2,610	2,806	2,421	2,244
5,550	5,600	1,021	1,037	959	919	8,750	8,800	1,784	1,847	1,658	1,551	11,950	12,000	2,623	2,822	2,434	2,255
5,600	5,650	1,031	1,048	969	929	8,800	8,850	1,796	1,861	1,670	1,562	12,000	12,050	2,637	2,839	2,447	2,266
5,650	5,700	1,042	1,059	978	938	8,850	8,900	1,809	1,875	1,681	1,573	12,050	12,100	2,652	2,857	2,460	2,279
5,700	5,750	1,052	1,070	988	948	8,900	8,950	1,821	1,889	1,693	1,584	12,100	12,150	2,666	2,875	2,474	2,291
5,750	5,800	1,063	1,081	997	957	8,950	9,000	1,834	1,903	1,704	1,595	12,150	12,200	2,681	2,893	2,487	2,304
5,800	5,850	1,073	1,092	1,007	967	9,000	9,050	1,846	1,917	1,716	1,606	12,200	12,250	2,695	2,911	2,501	2,316
5,850	5,900	1,084	1,103	1,016	976	9,050	9,100	1,859	1,931	1,727	1,617	12,250	12,300	2,710	2,929	2,514	2,329
5,900	5,950	1,094	1,114	1,026	986	9,100	9,150	1,871	1,945	1,739	1,628	12,300	12,350	2,724	2,947	2,528	2,341
5,950	6,000	1,105	1,125	1,035	995	9,150	9,200	1,884	1,959	1,750	1,639	12,350	12,400	2,739	2,965	2,541	2,354
6,000	6,050	1,116	1,136	1,046	1,005	9,200	9,250	1,896	1,973	1,762	1,650	12,400	12,450	2,753	2,983	2,555	2,366
6,050	6,100	1,128	1,149	1,057	1,014	9,250	9,300	1,909	1,987	1,773	1,661	12,450	12,500	2,768	3,001	2,568	2,379
6,100	6,150	1,140	1,161	1,068	1,024	9,300	9,350	1,921	2,001	1,785	1,672	12,500	12,550	2,782	3,019	2,582	2,391
6,150	6,200	1,152	1,174	1,079	1,033	9,350	9,400	1,934	2,015	1,796	1,683	12,550	12,600	2,797	3,037	2,595	2,404
6,200	6,250	1,164	1,186	1,090	1,043	9,400	9,450	1,946	2,029	1,808	1,694	12,600	12,650	2,811	3,055	2,609	2,416
6,250	6,300	1,176	1,199	1,101	1,052	9,450	9,500	1,959	2,043	1,819	1,705	12,650	12,700	2,826	3,073	2,622	2,429
6,300	6,350	1,188	1,211	1,112	1,062	9,500	9,550	1,971	2,057	1,831	1,716	12,700	12,750	2,840	3,091	2,636	2,441
6,350	6,400	1,200	1,224	1,123	1,071	9,550	9,600	1,984	2,071	1,842	1,727	12,750	12,800	2,855	3,109	2,649	2,454
6,400	6,450	1,212	1,236	1,134	1,081	9,600	9,650	1,996	2,085	1,854	1,738	12,800	12,850	2,869	3,127	2,663	2,466
6,450	6,500	1,224	1,249	1,145	1,090	9,650	9,700	2,009	2,099	1,865	1,749	12,850	12,900	2,884	3,145	2,676	2,479
6,500	6,550	1,236	1,261	1,156	1,100	9,700	9,750	2,021	2,113	1,877	1,760	12,900	12,950	2,898	3,163	2,690	2,491
6,550	6,600	1,248	1,274	1,167	1,109	9,750	9,800	2,034	2,127	1,888	1,771	12,950	13,000	2,913	3,181	2,703	2,504
6,600	6,650	1,260	1,286	1,178	1,119	9,800	9,850	2,046	2,141	1,900	1,782	13,000	13,050	2,927	3,199	2,717	2,516
6,650	6,700	1,272	1,299	1,189	1,128	9,850	9,900	2,059	2,155	1,911	1,793	13,050	13,100	2,942	3,217	2,730	2,529
6,700	6,750	1,284	1,311	1,200	1,138	9,900	9,950	2,071	2,169	1,923	1,804	13,100	13,150	2,956	3,235	2,744	2,541
6,750	6,800	1,296	1,324	1,211	1,147	9,950	10,000	2,084	2,183	1,934	1,815	13,150	13,200	2,971	3,253	2,757	2,554
6,800	6,850	1,308	1,336	1,222	1,157	10,000	10,050	2,097	2,198	1,946	1,826	13,200	13,250	2,985	3,271	2,771	2,566
6,850	6,900	1,320	1,349	1,233	1,166	10,050	10,100	2,110	2,214	1,959	1,837	13,250	13,300	3,000	3,289	2,784	2,579
6,900	6,950	1,332	1,361	1,244	1,176	10,100	10,150	2,124	2,230	1,971	1,848	13,300	13,350	3,014	3,307	2,798	2,591
6,950	7,000	1,344	1,374	1,255	1,185	10,150	10,200	2,137	2,246	1,984	1,859	13,350	13,400	3,029	3,325	2,811	2,604
7,000	7,050	1,356	1,386	1,266	1,195	10,200	10,250	2,151	2,262	1,996	1,870	13,400	13,450	3,043	3,343	2,825	2,616
7,050	7,100	1,368	1,399	1,277	1,204	10,250	10,300	2,164	2,278	2,009	1,881	13,450	13,500	3,058	3,361	2,838	2,629
7,100	7,150	1,380	1,411	1,288	1,214	10,300	10,350	2,178	2,294	2,021	1,892	13,500	13,550	3,072	3,379	2,852	2,641
7,150	7,200	1,392	1,424	1,299	1,223	10,350	10,400	2,191	2,310	2,034	1,903	13,550	13,600	3,087	3,397	2,865	2,654
7,200	7,250	1,404	1,436	1,310	1,233	10,400	10,450	2,205	2,326	2,046	1,914	13,600	13,650	3,101	3,415	2,879	2,666
7,250	7,300	1,416	1,449	1,321	1,242	10,450	10,500	2,218	2,342	2,059	1,925	13,650	13,700	3,116	3,433	2,892	2,679
7,300	7,350	1,428	1,461	1,332	1,252	10,500	10,550	2,232	2,358	2,071	1,936	13,700	13,750	3,130	3,451	2,906	2,691
7,350	7,400	1,440	1,474	1,343	1,261	10,550	10,600	2,245	2,374	2,084	1,947	13,750	13,800	3,145	3,469	2,919	2,704
7,400	7,450	1,452	1,486	1,354	1,271	10,600	10,650	2,259	2,390	2,096	1,958	13,800	13,850	3,159	3,487	2,933	2,716
7,450	7,500	1,464	1,499	1,365	1,280	10,650	10,700	2,272	2,406	2,109	1,969	13,850	13,900	3,174	3,505	2,946	2,729
7,500	7,550	1,476	1,511	1,376	1,290	10,700	10,750	2,286	2,422	2,121	1,980	13,900	13,950	3,188	3,523	2,960	2,741
7,550	7,600	1,488	1,524	1,387	1,299	10,750	10,800	2,299	2,438	2,134	1,991	13,950	14,000	3,203	3,541	2,973	2,754
7,600	7,650	1,500	1,536	1,398	1,309	10,800	10,850	2,313	2,454	2,146	2,002	14,000	14,050	3,218	3,560	2,987	2,766
7,650	7,700	1,512	1,549	1,409	1,318	10,850	10,900	2,326	2,470	2,159	2,013	14,050	14,100	3,233	3,579	3,001	2,779
7,700	7,750	1,524	1,561	1,420	1,328	10,900	10,950	2,340	2,486	2,171	2,024	14,100	14,150	3,249	3,599	3,015	2,791
7,750	7,800	1,536	1,574	1,431	1,337	10,950	11,000	2,353	2,502	2,184	2,035	14,150	14,200	3,264	3,618	3,029	2,804
7,800	7,850	1,548	1,586	1,442	1,347	11,000	11,050	2,367	2,518	2,196	2,046	14,200	14,250	3,280	3,638	3,043	2,816
7,850	7,900	1,560	1,599	1,453	1,356	11,050	11,100	2,380	2,534	2,209	2,057	14,250	14,300	3,295	3,657	3,057	2,829
7,900	7,950	1,572	1,611	1,464	1,366	11,100	11,150	2,394	2,550	2,221	2,068	14,300	14,35				

SCHEDULE SE
(Form 1040)
Department of the Treasury
Internal Revenue Service

Computation of Social Security Self-Employment Tax

▶ Each self-employed person must file a Schedule SE. ▶ Attach to Form 1040.
▶ See instructions for Schedule SE (Form 1040).

55c.
1976

● If you had wages, including tips, of \$15,300 or more that were subject to social security or railroad retirement taxes, do not fill in this schedule (unless you are eligible for the Earned Income Credit). See instructions.

● If you had more than one business, combine profits and losses from all your businesses and farms on this Schedule SE.

Important.—The self-employment income reported below will be credited to your social security record and used in figuring social security benefits.

NAME OF SELF-EMPLOYED PERSON (AS SHOWN ON SOCIAL SECURITY CARD)

Social security number of self-employed person ▶

Business activities subject to self-employment tax (grocery store, restaurant, farm, etc.) ▶

● If you have only farm income complete Parts I and III. ● If you have only nonfarm income complete Parts II and III.

● If you have both farm and nonfarm income complete Parts I, II, and III.

Part I Computation of Net Earnings from FARM Self-Employment

You may elect to compute your net farm earnings using the **OPTIONAL METHOD**, line 3, instead of using the **Regular Method**, line 2, if your gross profits are: (1) \$2,400 or less, or (2) more than \$2,400 and net profits are less than \$1,600. However, lines 1 and 2 must be completed even if you elect to use the **FARM OPTIONAL METHOD**.

REGULAR METHOD

1 Net profit or (loss) from: a Schedule F, line 54 (cash method), or line 72 (accrual method)
b Farm partnerships

2 Net earnings from farm self-employment (add lines 1a and b)

FARM OPTIONAL METHOD

3 If gross profits from farming¹ are: a Not more than \$2,400, enter two-thirds of the gross profits . . .
b More than \$2,400 and the net farm profit is less than \$1,600, Enter \$1,600

¹ Gross profits from farming are the total gross profits from Schedule F, line 28 (cash method), or line 70 (accrual method), plus the distributive share of gross profits from farm partnerships (Schedule K-1 (Form 1065), line 14) as explained in instructions for Schedule SE.

4 Enter here and on line 12a, the amount on line 2, or line 3 if you elect the farm optional method

Part II Computation of Net Earnings from NONFARM Self-Employment

REGULAR METHOD

5 Net profit or (loss) from: a Schedule C, line 21. (Enter combined amount if more than one business.)
b Partnerships, joint ventures, etc. (other than farming)
c Service as a minister, member of a religious order, or a Christian Science practitioner. (Include rental value of parsonage or rental allowance furnished.) If you filed Form 4361, check here ☐ and enter zero on this line
d Service with a foreign government or international organization
(See Form 1040 instructions for line 36.) Specify ▶
e Other

6 Total (add lines 5a through e)

7 Enter adjustments if any (attach statement)

8 Adjusted net earnings or (loss) from nonfarm self-employment (line 6, as adjusted by line 7)

If line 8 is \$1,600 or more OR if you do not elect to use the Nonfarm Optional Method, omit lines 9 through 11 and enter amount from line 8 on line 12b, Part III.

Note: You may use the nonfarm optional method (line 9 through line 11) only if line 8 is less than \$1,600 and less than two-thirds of your gross nonfarm profits,¹ and you had actual net earnings from self-employment of \$400 or more for at least 2 of the 3 following years: 1973, 1974, and 1975. The nonfarm optional method can only be used for 5 taxable years.

NONFARM OPTIONAL METHOD

9 a Maximum amount reportable, under both optional methods combined (farm and nonfarm)

b Enter amount from line 3. (If you did not elect to use the farm optional method, enter zero)

c Balance (subtract line 9b from line 9a)

10 Enter two-thirds of gross nonfarm profits¹ or \$1,600, whichever is smaller

11 Enter here and on line 12b, the amount on line 9c or line 10, whichever is smaller

¹ Gross profits from nonfarm business are the total of the gross profits from Schedule C, line 3, plus the distributive share of gross profits from nonfarm partnerships (Schedule K-1 (Form 1065), line 14) as explained in instructions for Schedule SE. Also, include gross profits from services reported on line 5c, d, and e, as adjusted by line 7.

Part III Computation of Social Security Self-Employment Tax

12 Net earnings or (loss): a From farming (from line 4)

b From nonfarm (from line 8, or line 11 if you elect to use the Nonfarm Optional Method)

13 Total net earnings or (loss) from self-employment reported on line 12. (If line 13 is less than \$400, you are not subject to self-employment tax. Do not fill in rest of schedule.)

14 The largest amount of combined wages and self-employment earnings subject to social security or railroad retirement taxes for 1976 is

15 a Total "FICA" wages and "RRTA" compensation

b Unreported tips subject to FICA tax from Form 4137, line 9 or to RRTA

c Total of lines 15a and b

16 Balance (subtract line 15c from line 14)

17 Self-employment income—line 13 or 16, whichever is smaller

18 Self-employment tax. (If line 17 is \$15,300.00, enter \$1,208.70; if less, multiply the amount on line 17 by .079.) Enter here and on Form 1040, line 58

55d

Schedule A Income and Adjustments. Complete the Federal Amount Column entering the items as they appear on your Federal Return. Transfer the Total Federal Amount from line 16 to page 1, line 1, "Column A". **Married Persons** who file a joint Federal Return on this combined form must also complete Columns (A) and (B). Enter the amounts which would have been reportable had you filed separate Federal returns. Transfer line 16 totals to page 1, line 1.

		Federal Amount	A) Husband	B) Wife
1 Wages, salaries, tips, etc.	1			
2 Dividends (after exclusion)	2			
3 Interest income	3			
4 Business income (attach copy of Federal Schedule C Form 1040)	4			
5 Sale or exchange of capital assets (attach copy of Federal Schedule D, Form 1040)	5			
6 50% of capital gain distributions	6			
7 Sale or exchange of property other than capital assets, etc.	7			
8a Pensions and annuities	8a			
8b Rents and royalties	8b			
8c Partnerships, estates and trusts and small business corporations	8c			
9 Fully taxable pensions and annuities	9			
10 Farm income (attach copy of Federal Schedule F, Form 1040)	10			
11 State income tax refunds	11			
12 Alimony received	12			
13 Other income	13			
14 Total (add lines 1 through 13)	14			
15 Adjustments (including sick pay allowable on Federal return)	15			
16 Total Income (line 14 less line 15 Enter on page 1, line 1)	16			

If husband and wife are filing separate returns on this Combined Form and the total of (A) and (B) is not equal to Federal amount, attach explanation.

Schedule B Itemized Deductions. Enter on lines 1 through 7 the items below as they appear on your Federal Return and make the applicable modifications on lines 8 and 10. Disregard if standard deduction is claimed on page 1, line 6a.

1 Medical and dental expenses	
2 Taxes	
3 Interest	
4 Contributions	
5 Casualty or theft losses	
6 Miscellaneous	
7 Total Federal itemized deductions	
8 Less income taxes in line 2	
9 Line 7 less line 8	
10 Other modifications (see instructions on page 6 and explain in Schedule C below)	
11 New York itemized deduction Enter on page 1, line 6b	

Schedule C Explanation of page 1, lines 2 and 4 and page 2, Schedule B, line 10. If filing status 3 is checked indicate H (husband's) or W (wife's) for page 1, line 2 and 4 items.

Line No.	Explanation	Amount

Reminder: Mail your Return on or before the Due Date to—
NY State Income Tax Bureau
The State Campus
Albany, New York 12227

Note: No State or Resident City of NY tax is payable if filing status checked is: **Single** and page 1, line 5 is \$2,500 or less; **Married filing joint return, Unmarried head of household or Qualifying widow(er) with dependent child** and page 1, line 5 is \$5,000 or less; **Married filing separately** and the combined Total New York Income of husband and wife on page 1, line 5 is \$5,000 or less. If no tax is payable as explained above, see instructions page 9.

New York State Tax Rate Schedule

If amount on page 1, line 9 is:
 over but not over enter on page 1, line 10

\$ 0	\$1,000	2% of amount on line 9
1,000	3,000	\$20 plus 3% of excess over \$1,000
3,000	5,000	80 plus 4% " " 3,000
5,000	7,000	160 plus 5% " " 5,000
7,000	9,000	260 plus 6% " " 7,000
9,000	11,000	380 plus 7% " " 9,000
11,000	13,000	520 plus 8% " " 11,000
13,000	15,000	680 plus 9% " " 13,000
15,000	17,000	860 plus 10% " " 15,000
17,000	19,000	1,060 plus 11% " " 17,000
19,000	21,000	1,280 plus 12% " " 19,000
21,000	23,000	1,520 plus 13% " " 21,000
23,000	25,000	1,780 plus 14% " " 23,000
25,000		2,060 plus 15% " " 25,000

New York City Resident Tax Rate Schedule

If amount on page 1, line 9 is:
 over but not over enter on page 1, line 19a

\$ 0	\$1,000	0.9% of amount on line 9
1,000	3,000	\$ 9 plus 1.4% of excess over \$1,000
3,000	5,000	37 plus 1.8% " " 3,000
5,000	7,000	73 plus 2.0% " " 5,000
7,000	9,000	113 plus 2.3% " " 7,000
9,000	11,000	159 plus 2.5% " " 9,000
11,000	13,000	209 plus 2.7% " " 11,000
13,000	15,000	263 plus 2.9% " " 13,000
15,000	17,000	321 plus 3.1% " " 15,000
17,000	19,000	383 plus 3.3% " " 17,000
19,000	21,000	449 plus 3.5% " " 19,000
21,000	23,000	519 plus 3.8% " " 21,000
23,000	25,000	595 plus 4.0% " " 23,000
25,000		675 plus 4.3% " " 25,000

PROOF OF SERVICE BY MAIL

On March 28 1977,

I mailed a true copy of the within brief, appendix + exhibits securely enclosed in a postpaid wrapper in the post office at Albany, New York regularly maintained by the United States Government directed to:

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(J. SWERDLOFF Estate Atty.) 120 Delaware Ave., Buffalo, N. Y. 14202

those being their designated and actual offices and addresses,
between which places there is regular communication by mail.

L. Robert Leisner